



Law Reform Commission
of Canada

Commission de réforme du droit
du Canada

drafting laws in french

STUDY PAPER

Canada

**DRAFTING LAWS
IN FRENCH**

DRAFTING LAWS IN FRENCH

Working Group Study carried out
between 1977 and 1979
by

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“The expression of the law, to be well understood, ought to be written in a language directly accessible to the mind.”

in
J.-L. Souriaux
and
P. Lerat¹

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Foreword

One of the tasks of the Law Reform Commission is to propose to Parliament legislative texts in the two official languages. It has already done so in several of its Reports on criminal law and administrative law.

Certain members of the Commission have noted, as have many others in this regard, the difficulty of formulating legal provisions in the two languages without betraying the thought, the culture and the linguistic reflexes of one of them.

For a long time now, this matter has been a particularly sore point with regard to the French versions of our federal statutes, which have been only a mere translation, sometimes a literal one indeed, of the English. Nevertheless it is gratifying to note the recent efforts made to mitigate these inconveniences and to allow the francophone reader to feel more comfortable with the French version.

It appeared useful to undertake a project with a dual objective in mind. The first would be to demonstrate in concrete fashion the possibility of obtaining in federal legislation a French version that would reflect the spirit of that language, without at the same time modifying the substance of the law. The second would be to verify an hypothesis according to which, in many respects, the English version would also be rendered more intelligible and more accessible to the public without betraying the spirit of that language.

The Commission has established a multidisciplinary working group, and the product proffered here is the result of two years of practical exercises and reflection. This text makes no pretence of being exhaustive nor of constituting a drafting manual. It is simply intended to demonstrate what I think could be one particular method leading to

a better equilibrium between the official versions. We of the working group and of the Law Reform Commission are very anxious to know the reactions of the public and of the specialists to this study.

We wish to thank all the public servants of the Department of Justice whom we have consulted at the various stages of our project.

Modest as it is, this work will, we hope, promote the interest already existing in several circles with respect to the study of legal linguistics and legislative drafting.

Jean-Louis Baudouin
Vice-Chairman
December, 1979

Notice

The purpose of this work is not to criticize legislative drafters or certain types of drafting. It is simply a practical exercise to develop another method of drafting laws in French.

The Authors

I

Introduction

The style of statutes is sometimes very stilted and technical. Those without legal training often have great difficulty trying to understand them. This is why, at the request of the Commission, we have focussed on the problem resulting from the esoteric character of such texts.

This research should be seen in the context of a relatively recent movement toward the study, on the part of French-speaking jurists and linguists,² of techniques applicable to legislative drafting. Until now, to call to mind some notions of chronological order, only English-speaking jurists³ have shown an interest in that which could become in the near future an entirely separate discipline in several French as well as English language law faculties. Certainly, French-speaking jurists have not failed to note the problems posed, not only for the man in the street, but also for the legal practitioner, by the deficiencies in legal language. However, in the French-speaking world, the interest in such considerations has been scant and scattered for a long time now.⁴ In France, for example, it has long been considered that the style of the statutory text is analogous to that adopted in literary texts.

The experience of the Civil Code led French jurists to avow a certain satisfaction in the clear, concise style of the legislative fresco designed on the initiative of Napoleon. It would seem that the activity of codification then had the distinctive characteristic of leading drafters to synthesize, a feature which is not found in the ordinary legislative activity of contemporary legislatures.

In their defence, we should specify that the law and the conception of the State as well as its role are not the same now as they were at

the beginning of the nineteenth century. The most diverse fields of social, economic, and cultural activity now fall under the control of the State, which acquits itself of this growing task by way of legislative rules. Since the beginning of the century, statutes have not ceased to increase in number and are now more and more specialized. The body of laws has thus become an agglomeration whose expression varies according to the epoch, the subject matter and the administration. The style, the training and the personality of the different drafters and the imprint left by each on the texts present in the long run an uneven whole.

As to internal design, it is easy to see that the specialization of statutes seems to have led drafters to conceive rules that are more and more detailed. Was this inevitable? It is not clear. In effect, legislating in a specific field such as egg marketing, for example, or the social reinstatement of former convicts, does not in our view entail the obligation to supplement the basic principles underlying the legislation with further details that are but mere technical modifications aimed at facilitating the insertion of these general principles into the body of positive law. It is likely that the legislator, in providing such details, is concerned with firmly establishing them in the statute rather than chancing that they will appear in some instrument of implementation or another.

Whatever the case, it is impossible not to notice that, due to the statutes adopted and the regulations enacted, positive law is increasing in volume. It is thus not surprising that the insertion of each new statute, of each new regulation, in what is fast becoming the hotch-potch of positive law, is an increasingly delicate operation. We have long since passed the stage where any single human being could know all the positive law and seize its leading thread.

The problem of accessibility to legislation becomes more complicated in Canada by the fact that the original drafting is done in one of the two official languages, usually English. The translation in French is often literal, thus complicating even more the comprehension of a text that is sometimes difficult to understand at the outset. The Law Reform Commission has already made certain comments on this subject,⁵ as have the Commissioner of Official Languages⁶ and numerous judges and lawyers⁷ who believe that the law should not be content with merely offering a high degree of certainty, but should also be intelligible.

Now, among the many obstacles to the harmonious expression of a federal statute in French, we find, on the one hand, the terminology, and, on the other hand, the logical articulation of the particular section or, indeed, of the statute as a whole. It is this last element that primarily holds our attention for, having overcome the terminological difficulty, that of drafting still remains. It seems that this can be attributed to a great deal more than the simple fact of the English original. For more than a century certain English-speaking drafters have been especially interested in the way statutes are drafted. The techniques that they commend are very different from those used in practice in the legislation of French-speaking countries. In our opinion this is due to certain cultural phenomena, which we will deal with in more detail from the point of view of translation.

In Canada, the presence of French language legislation raises many questions about the value of current practices. When two languages have the same status by law, is governing by way of translated legislation a legitimate process? There is cause to reflect on the misunderstandings which are profuse in a version that claims to be "faithful to" the original. Even if one willingly accepts that translation is an efficient means of communication between different linguistic communities, one equally must recognize that it has serious shortcomings that are hard to overcome, especially when dealing with the discrepancies between the original text and its translated version. Canadian courts have often noted this, and certain sections of the two statutes which are the object of this study illustrate it. Besides, is it not current practice to find in international treaties certain provisions stating the relative authority of versions drafted in different languages? In this regard, article 33 of the Vienna Convention of 29 May 1969 on the Law of Treaties⁸ demonstrates the efforts deployed to counterbalance the defects in interpretation inherent in multilingual documents having weight of law.

Article 33 — Interpretation of treaties authenticated in two or more languages

1. When a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail.

2. A version of the treaty in a language other than one of those in which the text was authenticated shall be considered an authentic text only if the treaty so provides or the parties so agree.

3. The terms of the treaty are presumed to have the same meaning in each authentic text.

4. Except where a particular text prevails in accordance with paragraph 1, when a comparison of the authentic texts discloses a difference of meaning which the application of articles 31 and 32 does not remove, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted.

In Canada, the federal government has adopted a provision enunciating the rule of interpretation that should be applied when the two versions of a legislative text differ. Paragraph 8(2)(d) of the *Official Languages Act*, R.S.C. 1970, c. O-2, provides that:

if the two versions of the enactment differ in a manner not coming within paragraph (c), preference shall be given to the version thereof that, according to the true spirit, intent and meaning of the enactment, best ensures the attainment of its objects. 1968-69, c. 54, s. 8.

The province of New Brunswick has also adopted a similar provision. Section 14 of the *Official Languages of New Brunswick Act*, R.S.N.B. 1973, c. O-1, confers equal authority to both versions of the statutes for purposes of interpretation. In Québec and Manitoba both versions of the statutes also have equal value. In Ontario, statutes are translated in French but only the English text is authentic.

The differences between the two versions of equally authentic texts have, moreover, given rise to a relatively abundant case-law, especially in Québec.

Finally, without twisting these remarks into a case against translation, it is necessary to underline the difficulties raised by the legislator when, usually during a session which is prolonged late into the night, he brings about important amendments to a bill. The translator is then required to come up with a perfectly "equivalent" version as quickly as possible, often within just a few hours.

This study constitutes a first synthesis of research of an essentially practical nature dealing with the linguistic formulation of legislative rules undertaken on behalf of the Law Reform Commission of Canada. Our work was not intended to bring about an in-depth reform of existing statutes. We only wanted to find an appropriate format that would make the meaningful substance of statutes easily accessible to the public. This is why we have chosen as the focal point of our work two existing statutes: An Act to provide for the establishment of a dairy commission for Canada, R.S.C. 1970, c. C-7, and An Act to provide for the control of narcotic drugs, R.S.C. 1970, c. N-1.

Still, why have we chosen these statutes? The *Canadian Dairy Commission Act* is fairly representative of the type of state intervention that aims to regulate a given sector of economic activity. The *Narcotic Control Act* is a statute of a penal nature aimed at regulating in a distinctly repressive manner, a sector of what is considered to be reprehensible activity.

We have thus chosen two statutes, one of which is relatively recent and the other, relatively old. We resolved to work from the French texts, both of which have been made official by vote of Parliament and royal assent; however, when we could not make out the true meaning of the statute from the French translation, we did not hesitate to consult the English text. We wanted to improve the expression of the law, and not the law itself. Moreover, we wanted to verify if it was possible and useful to improve the structure, the style and the terminology of the statute without modifying the impact of the law itself, even though its presentation had been changed.

In order to do this, firstly, we had to isolate the legal components in the two statutes that are the focal point of this study, and then outline the formal aspects of legislative drafting. Already, the notion of the structure of the texts was becoming clear, the examination of which required a twofold process:

- in the first phase, we assessed the elements that make up the existing statutes by drawing up a list including, in particular, titles, definitions, purpose, powers, obligations, regulatory powers, etc.
- in the second phase, we asked ourselves what logical organization we were able to draw from the existing structure.

Having been unable to ascertain a satisfactory logical structure in the French text, we undertook to reconstitute the initial text according to a meaningful structure.

We then raised the question of style; it was necessary to do this for reasons that will appear obvious to whoever consults the texts of the two statutes presently in force. We therefore tried, first to restore to the French text a clear, lucid formulation in keeping with the culture of French-speaking people, the target readers. Subsequently, having arrived at a draft that was more satisfactory from the French point of view, we asked ourselves whether the modifications of structure and style brought to the French text might be transposed to the English version. This is why we have prepared an English version of the

statute, taking care to avoid the many pitfalls that lie in wait for the legislative translator:

- on the one hand, the often underestimated difficulty of transferring a rule from one judicial system to another, from one judicial mentality to another;
- on the other hand, the problem of transmitting the same rule to two populations of different cultures, a rule which is supposed to be the source of homogeneous social behaviour.

The method adopted in this study becomes evident, for the most part, by reading the table of contents. Because of our concern for realism, we have based our reflections on examples drawn from existing legislation. However, the working group has chosen not to put itself in the position of jurists who, under normal circumstances, are in charge of drafting statutes; that is, it has not shackled itself with the time limitations and other Draconian exigencies that are so often those of law-makers. At first, these more flexible circumstances would seem to water down the usefulness of the results achieved. On the contrary, at the research level, discoveries made in the laboratory, in our opinion, open the door to new perspectives, indeed to a methodology that is both operational and immediately utilizable by the law-maker.

This study is divided into two very distinct parts. On the one hand, the reader will find in chapters II and III respectively the revised statutes in both French and English, preceded by a brief introduction and a plan. The texts are supplemented with a summary table of contents and, in the case of the French texts, an index. The text of the present statutes in both French and English, a table of concordance and a comparative study with explanatory notes follow. The explanatory notes state, for each section of the revised French statute, what we have changed in relation to the original text, and provide a brief analysis of the problems posed by the given section in the statute. In chapter IV, on the other hand, we have tried to draw comments of a general nature from this practical experience, which are a sort of new look at the principal points that the legislative drafter ought to keep always in mind. Finally, at the end of the study, we have grouped together under the title *A Method of Working*, a few words of advice or suggestions, as well as two review control sheets, the finishing tools for legislative drafting.

II

The Administrative Statute

1.

Introduction and Plan

This chapter is the result of research conducted on the *Canadian Dairy Commission Act* in its current statutory form. In order to identify the relative importance of the new revised statute in relation to other Canadian federal statutes also of an administrative nature, it would perhaps be useful to go over a few of the steps which finally led us to choose the *Canadian Dairy Commission Act* for the purposes of our study.

As stated earlier, we had to find a statute that was neither too recent nor too old, too long nor too short, but sufficiently detailed to be considered the archetype of a statute establishing a public agency. Thus, we began by putting together a list of twenty-two statutes, all of which generally met these criteria. After an initial scrutiny, we limited our choice to the following seven federal statutes:

- the *Tariff Board Act* (R.S.C. 1970, c. T-1)
- the *National Harbours Board Act* (R.S.C. 1970, c. N-8)
- the *Atomic Energy Control Act* (R.S.C. 1970, c. A-19)
- the *Canadian Dairy Commission Act* (R.S.C. 1970, c. C-7)

- the *Immigration Appeal Board Act* (R.S.C. 1970, c. I-3)
- the *Tax Review Board Act* (S.C. 1970-71-72, c. 11)
- the *Canadian Radio-television and Telecommunications Commission Act* (S.C. 1974-75-76, c. 49)

The second stage consisted in dissecting these statutes in order to evaluate their respective contents. To this end, we prepared tables by means of which we could compare the contents of the different statutes through simple juxtaposition. From this exercise, we learned a great deal about the composition of statutes, the different phrases used, the rigour in style and expression, and sometimes the lack of rigour; it also allowed us to make numerous other valuable observations.

The third stage required an in-depth study of one of the seven statutes in order to come up with a whole that conformed to our conception of a well-drafted statute. The stricter application of the criteria of the date and length of the statute led us to choose the *Canadian Dairy Commission Act*, a text at one and the same time sufficiently short and relatively recent, since it only dates from 1966-67.

The study of these numerous statutes enabled us, among other things, to compile a list of their common formal traits:

- the concept of section, means of expression of the legal rule;
- the legislative style peculiar to the French language and the legal and linguistic interferences resulting from initial drafting in English;
- the specific vocabulary of the statute; and
- the punctuation of legislative texts.

As far as the content is concerned, we saw that it varied from one statute to another. In the *Canadian Dairy Commission Act*, we found the following elements:

- the establishment of the agency, its objects, jurisdiction, composition, duties, powers, head office and operations;
- the chairman, vice-chairman, members, staff, consultative committee, meetings;
- human, material and financial resources; and
- offences and penalties.

Finally, the reconstruction work that we set out to do led to the development of a new architecture for the Act which we will lay out following a few words of introduction.

This new structure is the “plan” of the statute. But what does “plan” signify in this case? It can be defined as a cross-section of the text which brings out each one of the main parts. These are:

- interpretation
- organization
- resources
- operation
- advisory committee
- regulations
- offences and penalties.

The motives that prompted this architect’s type of work are many. The principal ones are clarity, logic, retrieval of information, and pedagogical concerns:

- clarity, because a well articulated division of the components makes the whole more easily accessible;
- logic, because the reader immediately perceives how the whole unfolds;
- the retrieval of information, because the data are thereafter put together in logical order; and
- pedagogical concerns, because the assimilation of the subject matter will be easier if it is crystal clear.

We present first the result of our efforts in drafting: the revised statutes in French and English, both preceded by a table of contents and followed, in the case of the French version, by an index; then, for reference purposes, the present statute in French and in English, and a table of concordance between it and the revised text. And finally, we set out the sections of the revised text in both French and English, supplemented with explanatory notes.

NATIONAL DAIRY PRODUCTS COMMISSION ACT PLAN

Sections	Interpretation	Organizational Arrangements				Delegated Legislation	Coercive Measures				
		Organization	Resources	Operation	Advisory Committee						
<i>Heading</i> 1	Chapter I <i>INTERPRETATION</i> • Definition	Chapter II <i>ORGANIZATION</i> • Establishment • Jurisdiction • Composition	Chapter III <i>RESOURCES</i> • Human • Material • Financial	Chapter IV <i>OPERATION</i> • Meetings and Internal Rules • Inspectors • Annual Report	Chapter V <i>ADVISORY COMMITTEE</i> • Establishment • Duties • Composition • Meetings	Chapter VI <i>REGULATIONS</i> • Regulations	Chapter VII <i>OFFENCES, PENALTIES</i> • Offences • Evidence				
<i>Heading</i> 2-3 4-11 12-17											
<i>Heading</i> 18-20 21 22-29											
<i>Heading</i> 30-32											
33-36 37-38											
<i>Heading</i> 39 40 41-43 44											
<i>Heading</i> 45-46											
<i>Heading</i> 47-49 50-51											

2.

Revised Text of the

*Canadian Dairy
Commission Act*

LOI SUR LA COMMISSION NATIONALE DES PRODUITS LAITIERS

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CHAPITRE PREMIER

INTERPRÉTATION

Définition
«produit
laitier»
“dairy
product”

1. Dans la présente loi, on entend par «produit laitier», le lait de vache, la crème de ce lait, un produit principalement ou entièrement à base de ce lait, ainsi que le sorbet.

CHAPITRE DEUXIÈME

L'ORGANISME

Création de
la commission

2. Une Commission nationale des produits laitiers est créée.

Siège

3. La commission a son siège dans la ville d'Ottawa.

Compétence

Objet de la
commission

4. L'objet de la commission est, d'une part, de permettre aux producteurs de lait de vache et de crème de ce lait dont l'entreprise est viable d'obtenir une juste rétribution de leur travail et de leur investissement et, d'autre part, d'assurer aux consommateurs un approvisionnement continu et suffisant de produits laitiers de bonne qualité.

Compétence

5. La commission est compétente en matière de commercialisation des produits laitiers sur le marché interprovincial et sur le marché d'exportation.

Attributions

6. Sous réserve des dispositions de la présente loi et des règlements, la commission peut faire ce qui est nécessaire,

principalement ou accessoirement, à la réalisation de son objet, notamment

a) acheter et aliéner des produits laitiers,

b) emballer, traiter, emmagasiner, expédier, assurer, importer, exporter les produits laitiers qu'elle a achetés,

c) fournir une aide financière directe ou indirecte aux producteurs de lait de vache et de crème de ce lait, selon des critères qu'elle juge appropriés, dans le but de stabiliser les prix,

d) faire des recherches concernant la production, le traitement ou la commercialisation des produits laitiers,

e) promouvoir la consommation de produits laitiers, l'amélioration de leur qualité et leur diversification,

f) informer le public sur la consommation, la qualité et la diversité des produits laitiers.

Pouvoirs
d'enquête

7. La commission possède, pour les recherches concernant la production, le traitement ou la commercialisation des produits laitiers, les pouvoirs d'un commissaire nommé en vertu de la Partie I de la *Loi sur les enquêtes*.

Directives du
gouverneur en
conseil ou du
Ministre

8. Dans l'exercice de ses attributions en matière d'importation ou d'exportation de produits laitiers, la commission se conforme aux directives du gouverneur en conseil ou du ministre de l'Agriculture.

Mandataire de
Sa Majesté

9. La commission est mandataire de Sa Majesté et n'exerce ses pouvoirs qu'à ce titre.

Contrats

10. La commission conclut les contrats pour le compte de Sa Majesté, en son nom ou au nom de Sa Majesté.

Action en justice

11. La commission peut intenter une action en justice, en son nom ou au nom de Sa Majesté, à l'égard d'un droit acquis ou d'une obligation contractée pour le compte de Sa Majesté.

Une personne peut intenter une action en justice contre la commission.

Est compétente à juger une action intentée par ou contre la commission, la cour dont la juridiction s'exercerait si la commission n'était pas mandataire de Sa Majesté.

Composition

Composition

12. La commission est composée de trois commissaires nommés par le gouverneur en conseil. Leur fonction est amovible.

Président et vice-président

13. Le gouverneur en conseil désigne parmi les commissaires un président et un vice-président.

Administrateur en chef

14. Le président est l'administrateur en chef de la commission.

Retraite

15. Un commissaire cesse d'occuper son poste dès qu'il atteint soixante-dix ans.

Remplaçant provisoire

16. En cas d'absence ou d'incapacité d'agir d'un commissaire, le gouverneur en conseil peut lui nommer, aux conditions qu'il prescrit, un remplaçant provisoire.

Rémunération et indemnités

17. Le gouverneur en conseil fixe la rémunération et les indemnités des commissaires.

CHAPITRE TROISIÈME

RESSOURCES DE L'ORGANISME

Ressources humaines

Personnel

18. La commission nomme le personnel nécessaire à la réalisation de son objet.

Fonctions

19. La commission détermine les fonctions de son personnel.

Conditions
d'emploi

20. La commission fixe, avec l'approbation du Conseil du Trésor, les conditions d'emploi, la rémunération et les indemnités du personnel.

Ressources matérielles

Biens

21. Les biens que la commission acquiert au nom de Sa Majesté ou en son nom propre sont dévolus à Sa Majesté.

Ressources financières

Programme
annuel

22. La commission soumet chaque année au ministre de l'Agriculture les grandes lignes de son programme budgétaire pour l'exercice suivant.

Montant payable
par l'Office de
stabilisation
des prix
agricoles

23. La commission établit son programme budgétaire après que le gouverneur en conseil a déterminé, conformément à la *Loi sur la stabilisation des prix agricoles*, le montant payable à la commission par l'Office de stabilisation des prix agricoles, en vue de stabiliser le prix d'un produit laitier.

Prêts à la
commission

24. À la demande de la commission, le ministre des Finances peut, à même le Fonds du revenu consolidé et selon les modalités qu'approuve le gouverneur en conseil, lui consentir des prêts pour acheter des produits laitiers, les emballer, traiter, emmagasiner, expédier, assurer, importer, exporter et aliéner.

Maximum
des prêts

25. Le total des prêts que le ministre des Finances consent à la commission ne dépasse jamais trois cents millions de dollars.

Dépenses

26. La commission effectue ses dépenses à même les crédits que le Parlement affecte à cette fin, à l'exclusion de celles qui, de l'avis du ministre de l'Agriculture, sont directement imputables aux mesures que prend la commission pour stabiliser le prix d'un produit laitier.

Compte

27. Un compte de la Commission nationale des produits laitiers est établi au Fonds du revenu consolidé.

Montants
crédités
au compte

28. Sont crédités au compte

a) les deniers perçus par la commission et provenant de ses activités,

b) les droits des permis et les taxes payés à la commission,

c) les prêts consentis à la commission par le ministre des Finances,

d) le montant payé à la commission par l'Office de stabilisation des prix agricoles aux termes de la *Loi sur la stabilisation des prix agricoles*, en vue de stabiliser le prix d'un produit laitier.

Montants
imputés
au compte

29. Sont payés à même le Fonds du revenu consolidé et débités au compte, mais sans en excéder le crédit,

a) les dépenses qui, de l'avis du ministre de l'Agriculture, sont directement imputables aux mesures que prend la commission pour stabiliser le prix d'un produit laitier,

b) les montants payés au ministre des Finances en remboursement du principal et des intérêts des prêts qu'il a consentis à la commission.

CHAPITRE QUATRIÈME

FONCTIONNEMENT DE L'ORGANISME

Réunions

30. La commission tient ses réunions où elle le juge à propos.

Règlements internes

31. La commission se donne les règlements internes nécessaires à son fonctionnement.

Quorum

32. La commission fixe par règlement interne le quorum de ses réunions.

Inspecteurs

33. La commission nomme des inspecteurs aux fins de la présente loi et leur délivre un certificat de nomination.

Pouvoirs des inspecteurs

34. Un inspecteur peut, à heure raisonnable, pénétrer dans un lieu où, d'après ce qu'il a raison de croire, se trouve un produit dont la commercialisation est réglementée ou interdite par règlement.

Il produit son certificat de nomination à la demande du responsable des lieux qu'il inspecte.

Inspection

35. L'inspecteur peut, aux fins d'inspection, exiger la production des documents se rapportant à un produit dont la commercialisation est réglementée ou interdite par règlement et en prendre des copies ou extraits.

Aide à l'inspecteur

36. Le propriétaire ou le responsable des lieux, ainsi que les personnes qui s'y trouvent, fournissent à l'inspecteur l'aide raisonnable, nécessaire à l'exercice de ses fonctions.

Rapport
annuel

37. Dans les trois mois suivant la fin de l'exercice, la commission soumet au ministre de l'Agriculture un rapport annuel des activités financières et des mesures prises en vertu de la présente loi.

Le ministre de l'Agriculture peut prescrire une forme particulière pour le rapport.

Dépôt du
rapport

38. Le ministre de l'Agriculture dépose le rapport au Parlement dans les quinze jours qui suivent sa réception.

S'il le reçoit alors que le Parlement ne siège pas, il le dépose dans les quinze jours de séance qui suivent.

CHAPITRE CINQUIÈME

LE COMITÉ CONSULTATIF

Création
du comité

39. Le ministre de l'Agriculture crée un comité consultatif.

Fonction

40. À la demande de la commission, le comité conseille cette dernière en matière de production et de commercialisation des produits laitiers.

Composition
et mandat

41. Le ministre de l'Agriculture nomme les neuf membres du comité pour trois ans au plus. Toutefois, lors de la création du comité, trois membres sont nommés pour deux ans, trois pour trois ans et trois pour quatre ans.

Président

42. Le ministre de l'Agriculture désigne un président parmi les membres.

Rémunération
et indemnités

43. Le gouverneur en conseil fixe la rémunération et les indemnités des membres.

Réunions

44. Le comité se réunit à la demande de la commission.

CHAPITRE SIXIÈME

RÉGLEMENTATION

Règlements

45. Le gouverneur en conseil peut faire des règlements portant sur la commercialisation des produits laitiers. Les règlements peuvent être particuliers à un produit laitier, à une région, à un groupe ou à une catégorie de personnes.

Les règlements visent la réalisation des objets de la commission et l'application de la loi. Ils portent notamment sur

- a)* le contingentement à la commercialisation d'un produit laitier,
- b)* la saisie et la disposition d'un produit laitier commercialisé en violation d'un règlement établi en vertu du présent article,
- c)* le classement des personnes qui produisent un produit laitier en vue de sa commercialisation, ainsi que des personnes qui traitent un produit laitier en vue de sa commercialisation,
- d)* la désignation des organismes seuls autorisés à commercialiser un produit laitier visé aux règlements,
- e)* l'obligation de détenir un permis pour commercialiser un produit laitier,
- f)* la délivrance, l'annulation ou la suspension de permis, soit de production, soit de traitement d'un produit laitier visé aux règlements,
- g)* l'imposition et la perception par la commission de droits attachés à la délivrance des permis de production et de traitement d'un produit laitier visé aux règlements,

h) l'imposition et la perception par la commission de taxes attachées à la production ou au traitement d'un produit laitier visé aux règlements, selon le classement des personnes établi par règlement, en vertu du présent article,

i) les formalités nécessaires à l'admissibilité des producteurs de lait de vache ou de crème de ce lait à l'aide financière que la commission peut fournir dans le but d'en stabiliser les prix,

j) la désignation et le contenu des livres et des registres que tiennent les personnes qui produisent ou traitent un produit laitier visé aux règlements.

Produits
laitiers sur
la liste de
marchandises
d'importation
contrôlée

46. Le gouverneur en conseil peut ajouter à la liste de marchandises d'importation contrôlée, établie aux termes de la *Loi sur les licences d'exportation et d'importation*, un produit laitier dont il convient de contrôler l'importation pour permettre l'application des mesures de soutien des prix.

CHAPITRE SEPTIÈME

INFRACTIONS ET PEINES

Infractions
et peines

47. Une personne qui viole une disposition de la présente loi ou d'un règlement établi sous son régime ou dont l'agent ou l'employé viole une telle disposition, commet une infraction et encourt

a) sur déclaration sommaire de culpabilité, une amende maximale de cinq cents dollars, un emprisonnement maximal de six mois ou les deux à la fois,

b) sur déclaration de culpabilité sur un acte d'accusation, une amende maximale de deux mille dollars, un emprisonnement maximal d'un an ou les deux à la fois.

Entrave à
un inspecteur

48. L'entrave à l'action d'un inspecteur dans l'exercice de ses fonctions constitue une infraction.

Déclaration
trompeuse

49. Une déclaration fausse ou trompeuse faite à un inspecteur dans l'exercice de ses fonctions constitue une infraction.

Preuve
suffisante

50. Dans une poursuite pour infraction, le fait d'établir que l'infraction a été commise par un agent ou un employé de l'accusé, que celui-ci soit identifié ou non, constitue une preuve suffisante de l'infraction.

Défense
admissible

51. La personne dont l'agent ou l'employé a commis une infraction peut, pour sa défense, démontrer qu'elle avait fait diligence pour prévenir l'infraction.

LOI SUR LA COMMISSION NATIONALE DES PRODUITS LAITIERS

Index

Translator's note: This index, based on the French version of the revised text, comprises keywords or expressions listed alphabetically and referred to in terms of the numbers of the sections of the Act in which they appear. An index of the English version of an Act could adopt the same model.

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NATIONAL DAIRY PRODUCTS COMMISSION ACT

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CHAPTER ONE

INTERPRETATION

Definition
"dairy
product"
«produit
laitier»

1. In this Act, "dairy product" means milk from cows, cream derived from such milk, a product manufactured wholly or mainly from such milk as well as sherbet.

CHAPTER TWO

ORGANIZATION

Commission
established

2. A National Dairy Products Commission is established.

Head office

3. The head office of the Commission is in the city of Ottawa.

Jurisdiction

Object of the
Commission

4. The object of the Commission is twofold: first, to allow efficient producers of milk from cows and cream from such milk to obtain a fair return for their labour and investment; and second, to provide consumers with a continuous and adequate supply of quality dairy products.

Jurisdiction

5. The Commission has jurisdiction over marketing of dairy products in inter-provincial and export trade.

Powers

6. Subject to this Act and its regulations, the Commission may do whatever is necessary, mainly or incidentally, to carry out its object, especially:

(a) purchase dairy products or dispose of them;

(b) package, process, store, ship, insure, import, and export dairy products purchased by it;

(c) provide direct or indirect financial aid to producers of milk from cows or cream from such milk in accordance with criteria it deems appropriate for the purpose of stabilizing prices;

(d) investigate any matter relating to the production, processing or marketing of dairy products;

(e) promote the use of dairy products and the improvement of their quality and variety; and

(f) inform the public on the use, quality and variety of dairy products.

Powers of
inquiry

7. The Commission has, for the purpose of investigation of any matter related to producing, processing, or marketing dairy products, the powers of a commissioner appointed under Part I of the *Inquiries Act*.

Directions
from the
Governor in
Council or
the Minister

8. In exercising its powers or in carrying out its duties with respect to the importation or exportation of dairy products, the Commission shall comply with directions given by the Governor in Council or by the Minister of Agriculture.

Agent
of Her
Majesty

9. The Commission is an agent of Her Majesty and only exercises its powers as such.

Contracts

10. The Commission enters into contracts on behalf of Her Majesty, in the name of the Commission or in the name of Her Majesty.

Legal
proceedings

11. The Commission may take, in its name or in the name of Her Majesty, legal proceedings with respect to any right acquired or obligation incurred on behalf of Her Majesty.

Anyone may take legal proceedings against the Commission.

Any court which would have jurisdiction in a legal proceeding taken by or against the Commission if the Commission were not an agent of Her Majesty has jurisdiction.

Composition

Composition

12. The Commission consists of three commissioners appointed by the Governor in Council to hold office during pleasure.

President and vice-president

13. The Governor in Council designates a president and a vice-president from among the commissioners.

Chief executive

14. The president is the chief executive officer of the Commission.

Retirement

15. A commissioner ceases to hold office upon reaching the age of seventy years.

Temporary substitute

16. Where a commissioner is absent or unable to act, the Governor in Council may appoint a temporary substitute commissioner upon such conditions as he prescribes.

Remuneration and expenses

17. The Governor in Council fixes the remuneration and expenses of commissioners.

CHAPTER THREE

RESOURCES

Human Resources

Personnel

18. The Commission appoints the personnel necessary for carrying out its object.

Duties

19. The Commission prescribes the duties of its personnel.

Conditions
of
employment

20. The Commission prescribes, with the approval of the Treasury Board, the conditions of employment of its personnel and fixes their salaries and expenses.

Material Resources

Property

21. Property acquired by the Commission, whether in its name or in the name of Her Majesty, is the property of Her Majesty.

Financial Resources

Annual
program

22. Each year the Commission shall submit to the Minister of Agriculture an outline of its program for the following fiscal year.

Amount
payable
by the
Agricultural
Stabilization
Board

23. The Commission establishes its budget after the Governor in Council has, pursuant to the *Agricultural Stabilization Act*, determined the amount payable to the Commission by the Agricultural Stabilization Board for the purpose of stabilizing the price of a dairy product.

Loans
to the
Commission

24. At the request of the Commission, the Minister of Finance may make loans to the Commission out of the Consolidated Revenue Fund and on such terms and conditions as are approved by the Governor in Council for the purchasing, packaging, processing, storing, shipping, insuring, importing, exporting, or disposing of dairy products.

Maximum
loans

25. The total amount of loans that the Minister of Finance makes to the Commission shall not exceed three hundred million dollars.

Expenditures

26. The Commission pays for its expenditures out of money appropriated for such purpose by Parliament excluding those expenditures that the Minister of Agriculture determines are directly attributable to action taken by the Commission to stabilize the price of a dairy product.

Account

27. An account for the National Dairy Product Commission is established in the Consolidated Revenue Fund.

Credits
to the
account

28. There shall be credited to the account:

- (a) moneys received by the Commission from its operations;
- (b) licence fees and charges paid to the Commission;
- (c) loans made to the Commission by the Minister of Finance; and
- (d) amounts paid to the Commission by the Agricultural Stabilization Board pursuant to the *Agricultural Stabilization Act* for the purpose of stabilizing the price of a dairy product.

Charges
to the
account

29. There shall be paid out of the Consolidated Revenue Fund and charged to the account, but without exceeding its credit,

- (a) expenditures that the Minister of Agriculture determines are directly attributable to action taken by the Commission to stabilize the price of any dairy product; and
- (b) amounts reimbursed to the Minister of Finance as principal or interest on loans made to the Commission.

CHAPTER FOUR

OPERATION

Meetings

30. The Commission holds its meetings wherever it so decides.

Internal rules

31. The Commission makes such internal rules as are necessary for its operations.

Quorum

32. The Commission fixes by internal rules the quorum of its meetings.

Inspectors

33. The Commission appoints inspectors for the purposes of this Act and furnishes them with a certificate of appointment.

Powers of inspectors

34. An inspector may, at any reasonable time, enter a place in which he reasonably believes there is a product the marketing of which is regulated or prohibited by regulation.

The inspector shall produce his certificate if so required by the person in charge of the place he is inspecting.

Inspection

35. The inspector may require anyone to produce for inspection documents relating to a product the marketing of which is regulated or prohibited by regulation and may make copies of them.

Assistance
to
inspector

36. The owner or the person in charge of the place as well as anyone else therein shall give the inspector all reasonable assistance required for the performance of his duties.

Annual
report

37. Within three months after the termination of each fiscal year, the Commission shall submit to the Minister of

Agriculture an annual report of financial transactions and other actions taken under this Act.

The Minister may prescribe the form of the report.

Laying
of report

38. The Minister of Agriculture lays the report before Parliament within fifteen days after receiving it.

If he receives it while Parliament is not sitting, he then lays the report within the first fifteen days of the next sitting.

CHAPTER FIVE

ADVISORY COMMITTEE

Committee
established

39. The Minister of Agriculture shall establish an Advisory Committee.

Duties

40. The Committee shall, when the Commission so requests, advise it upon matters relating to the production and marketing of dairy products.

Composition
and tenure

41. The Minister of Agriculture appoints the nine members of the Committee for a maximum of three years. However, upon the establishment of the Committee, three members are appointed for two years, three for three years and three for four years.

President

42. The Minister of Agriculture designates a president from among the members.

Remuneration
and expenses

43. The Governor in Council fixes the remuneration and expenses of members.

Meetings

44. The Committee meets at the request of the Commission.

CHAPTER SIX

REGULATIONS

Regulations

45. The Governor in Council may make regulations for the marketing of dairy products. Regulations may be specific to any one dairy product, area, group or class of persons.

Regulations aim at carrying out the object of the Commission and the purposes of this Act. They relate, in particular, to

- (a) marketing on a quota basis;
- (b) seizure and disposal of a dairy product marketed in contravention of any regulation made under this section;
- (c) classification of persons who produce any dairy product for market as well as persons who process any dairy product for market;
- (d) designation of agencies through which a dairy product that comes under the regulations shall be marketed;
- (e) requirement of licence for the marketing of any dairy product;
- (f) issuance, cancellation or suspension of licences for either the production or processing of a dairy product that comes under the regulations;
- (g) imposition and collection by the Commission of fees for issuing licences for the production or processing of a product that comes under the regulations;
- (h) imposition and collection by the Commission of charges for the pro-

duction or processing of a product that comes under the regulations according to the classification of persons as established by regulation under this section;

(i) rules governing the eligibility of producers of milk from cows and cream from such milk for financial aid that the Commission may provide for the purpose of stabilizing prices; and

(j) types and content of books and records that shall be kept by persons who produce or process a dairy product that comes under the regulations.

Dairy products
on the Import
Control List

46. The Governor in Council may add to the Import Control List established under the *Export and Import Permits Act* any dairy product for which he deems it is necessary to control importation in order to allow the implementation of measures of price support.

CHAPTER SEVEN

OFFENCES AND PENALTIES

Offences
and
penalties

47. Every person who contravenes a provision of this Act or its regulations, or whose agent or employee contravenes such a provision, commits an offence and is liable

(a) on summary conviction to a maximum fine of five hundred dollars or to imprisonment for a maximum term of six months, or to both; and

(b) on conviction upon indictment to a maximum fine of two thousand

dollars or imprisonment for a maximum of one year, or both.

Obstruction
of inspector

48. It is an offence to obstruct an inspector in the carrying out of his duties.

False or
misleading
statements

49. It is an offence to make false or misleading statements to an inspector engaged in the carrying out of his duties.

Sufficient
evidence

50. In a prosecution for an offence it is sufficient proof of the offence to establish that it was committed by an agent or employee of the accused, whether or not the person be identified.

Admissible
defence

51. A person whose agent or employee committed an offence may for his defence establish that he exercised due diligence to prevent its commission.

3.

Present Act

CHAPITRE C-7

Loi prévoyant la création d'une Commission canadienne du lait

TITRE ABRÉGÉ

Titre abrégé

1. La présente loi peut être citée sous le titre: *Loi sur la Commission canadienne du lait*. 1966-67, c. 34, art. 1.

INTERPRÉTATION

Définitions

«commercialiser»
“market”

2. Dans la présente loi

«commercialiser» signifie commercialiser sur le marché interprovincial ou sur le marché d'exportation;

«Commission»
“Commission”

«Commission» désigne la Commission canadienne du lait établie par la présente loi;

«lait» «crème»
“milk”

«lait» désigne le lait de vache et «crème» désigne la crème obtenue de ce lait;

«lieu»
“place”

«lieu» comprend tout véhicule, navire, wagon ou aéronef;

«Ministre»
“Minister”

«Ministre» désigne le ministre de l'Agriculture;

«produit laitier»
“dairy...”

«produit laitier» désigne le lait, la crème, le beurre, le fromage, le lait condensé, le lait évaporé, la poudre de lait, le lait sec, la crème glacée, la farine lactée, le sorbet ou tout autre produit entièrement ou principalement à base de lait;

«produit réglementé»
“regulated...”

«produit réglementé» désigne un produit laitier dont la commercialisation est réglementée ou interdite par des règlements établis aux termes de la présente loi. 1966-67, c. 34, art. 2.

COMMISSION CANADIENNE DU LAIT

Création de la Commission

3. (1) Est établie une corporation appelée Commission canadienne du lait formée de trois membres nommés par le gouverneur en conseil, qui occuperont leur poste à titre amovible.

Président et vice-président

(2) Le gouverneur en conseil désigne l'un des membres pour occuper le poste de président et un autre pour occuper celui de vice-président de la Commission.

Fonctionnaire
administratif en
chef

(3) Le président est le fonctionnaire administratif en chef de la Commission.

Rémunération
et frais

(4) Chaque membre de la Commission peut recevoir le traitement ou autre rémunération que fixe le gouverneur en conseil ainsi que les frais de voyage et de subsistance encourus par lui dans l'exercice de ses fonctions, tels qu'ils sont fixés par le gouverneur en conseil.

Âge de retraite

(5) Un membre cesse d'occuper son poste dès qu'il atteint soixante-dix ans.

Remplaçants
provisoires

(6) Si quelque membre de la Commission est absent ou s'il est dans l'impossibilité d'agir, le gouverneur en conseil peut nommer, pour la durée et aux conditions qu'il prescrit, un remplaçant provisoire.

Siège social

(7) Le siège social de la Commission est établi en la ville d'Ottawa, mais les réunions de la Commission peuvent se tenir en tels autres lieux que la Commission peut décider. 1966-67, c. 34, art. 3.

Mandataire de
Sa Majesté

4. (1) A toutes les fins de la présente loi, la Commission est mandataire de Sa Majesté et n'exerce qu'à ce titre les pouvoirs que lui confère la présente loi.

Contrats

(2) La Commission peut, pour le compte de Sa Majesté, conclure des contrats au nom de Sa Majesté ou au nom de la Commission.

Biens

(3) Les biens acquis par la Commission sont dévolus à Sa Majesté et les titres à ces biens peuvent être établis au nom de Sa Majesté ou au nom de la Commission.

Actions

(4) Des actions, poursuites ou autres procédures judiciaires concernant un droit acquis ou une obligation contractée par la Commission pour le compte de Sa Majesté, soit en son propre nom, soit au nom de Sa Majesté, peuvent être intentées ou engagées par ou contre la Commission au nom de cette dernière, devant toute cour qui aurait juridiction si la Commission n'était pas mandataire de Sa Majesté. 1966-67, c. 34, art. 4.

COMITÉ CONSULTATIF

Comité
consultatif

5. (1) Le Ministre doit nommer un comité consultatif comprenant un président et huit autres membres.

Durée du
mandat des
membres

(2) Chaque membre du comité consultatif est nommé pour un mandat de trois ans au plus, avec cette réserve que, parmi les membres nommés la première fois, trois le sont pour un mandat de deux ans, trois le sont pour un mandat de trois ans, et trois pour un mandat de quatre ans. 1966-67, c. 34, art. 5.

Fonctions du
comité
consultatif

6. (1) Le comité consultatif doit se réunir aux époques que fixe la Commission et doit conseiller la Commission sur les questions relatives à la production et à la commercialisation des produits laitiers qui lui sont renvoyées par la Commission.

Rémunération
et frais

(2) Les membres du comité consultatif peuvent recevoir pour leurs services la rémunération et les frais que fixe le gouverneur en conseil. 1966-67, c. 34, art. 6.

PERSONNEL

Fonctionnaires
et employés

7. (1) La Commission peut

a) nommer les fonctionnaires et employés dont elle a besoin pour faire convenablement son travail; et

b) prescrire les fonctions de ces fonctionnaires et employés et, sous réserve de l'approbation du conseil du Trésor, prescrire les conditions de leur emploi.

Traitements et
frais du
personnel

(2) Les fonctionnaires et employés de la Commission nommés comme le prévoit le paragraphe (1) doivent recevoir les traitements et les frais que fixe la Commission avec l'approbation du conseil du Trésor. 1966-67, c. 34, art. 7.

OBJETS DE LA COMMISSION

Objets de la
Commission

8. Les objets de la Commission sont d'offrir aux producteurs efficaces de lait et de crème l'occasion d'obtenir une juste rétribution de

leur travail et de leur investissement et d'assurer aux consommateurs de produits laitiers un approvisionnement continu et suffisant de produits laitiers de bonne qualité. 1966-67, c. 34, art. 8.

POUVOIRS DE LA COMMISSION

Pouvoirs

9. (1) Sous réserve et en conformité de tous règlements établis aux termes de la présente loi, la Commission peut

a) acheter tout produit laitier et emballer, traiter, emmagasiner, expédier, assurer, importer, exporter, vendre ou autrement aliéner tout produit laitier acheté par elle;

b) faire des paiements au profit des producteurs de lait et de crème aux fins de stabiliser le prix de ces produits, ces paiements pouvant être faits d'après le volume, la qualité ou tout autre barème que la Commission peut estimer approprié;

c) faire des recherches sur toute question relative à la production, au traitement ou à la commercialisation de tout produit laitier et notamment au prix de revient de la production, du traitement ou de la commercialisation de ce produit;

d) encourager et aider à encourager la consommation des produits laitiers, l'amélioration de leur qualité et l'augmentation de leur variété, et la publication de renseignements y relatifs; et

e) faire tous actes et toutes choses nécessaires ou accessoires à l'exercice de ses pouvoirs ou de ses fonctions aux termes de la présente loi.

Enquêtes

(2) En vue de poursuivre des recherches quelconques prévues à l'alinéa (1)c), la Commission possède tous les pouvoirs d'un commissaire nommé selon la Partie I de la *Loi sur les enquêtes*.

Règles de procédure

(3) La Commission peut établir les règles qu'elle estime nécessaires pour régir ses délibérations, pour fixer le quorum de ses réunions et, en général, pour la conduite de ses activités en vertu de la présente loi. 1966-67, c. 34, art. 9.

DEVOIRS DE LA COMMISSION

La Commission doit soumettre un programme au Ministre

10. (1) Chaque année, après la détermination, faite par le gouverneur en conseil en conformité de la *Loi sur la stabilisation des prix agricoles*, du montant total à payer par l'Office de stabilisation des prix agricoles à la Commission aux fins de stabiliser le prix du lait et de la crème, la Commission doit soumettre au Ministre les grandes lignes du programme grâce auquel elle se propose d'exercer ses fonctions aux termes de la présente loi pendant l'année financière suivante.

Façon d'exercer ses fonctions

(2) La Commission doit exercer les fonctions que lui assigne la présente loi de façon à réaliser ses objets et à s'acquitter de ses obligations à l'aide des deniers dont elle peut disposer aux termes de la présente loi. 1966-67, c. 34, art. 10.

Directives du gouverneur en conseil ou du Ministre

11. Dans l'exercice de ses pouvoirs aux termes de la présente loi ou des règlements en ce qui concerne l'importation ou l'exportation de tout produit laitier, la Commission doit se conformer aux directives qui lui sont données à l'occasion par le gouverneur en conseil ou le Ministre. 1966-67, c. 34, art. 11.

RÈGLEMENTS

Règlements

12. (1) Le gouverneur en conseil peut établir des règlements portant sur la commercialisation de tout produit laitier, notamment des règlements

- a) instituant pour la commercialisation de chaque produit laitier un système de contingentement;
- b) désignant les organismes par l'intermédiaire desquels tout produit réglementé doit être commercialisé;
- c) visant l'émission de permis aux personnes qui produisent ou traitent un produit réglementé en vue de sa commercialisation, prescrivant les droits à verser pour ces permis et prévoyant leur annulation ou leur suspension;
- d) interdisant à toutes personnes de se livrer à la commercialisation de tout produit laitier, de quelque catégorie, variété ou qualité que ce soit, en totalité ou en partie, à moins d'y être autorisées par permis;

e) prescrivant les livres et les registres que doivent tenir les personnes qui produisent ou traitent un produit réglementé en vue de sa commercialisation, ainsi que les renseignements que doivent fournir ces personnes;

f) autorisant la Commission à fixer, imposer et percevoir des droits ou taxes que doivent verser les personnes qui se livrent à la commercialisation de tout produit laitier ou qui produisent ou traitent un produit réglementé en vue de sa commercialisation et, à ces fins, ranger ces personnes dans des groupes, fixer les droits ou les taxes payables par les membres des différents groupes et utiliser ces droits ou taxes pour l'exercice des fonctions que lui assigne la présente loi;

g) prévoyant la saisie de tout produit réglementé commercialisé en violation d'un règlement établi en vertu du présent article, ainsi que la façon d'en disposer; et

h) visant, de façon générale, la réalisation des objets de la présente loi et l'application de ses dispositions.

Un règlement
peut être
général ou
particulier

(2) Un règlement établi en vertu du paragraphe (1) peut être général ou particulier à un produit laitier, à une région ou à un groupe ou une catégorie de personnes. 1966-67, c. 34, art. 12.

Idem

13. Le gouverneur en conseil peut établir des règlements exigeant l'enregistrement, pour les producteurs de lait ou de crème, comme condition préalable à l'obtention d'un paiement effectué aux termes de l'alinéa 9(1)b) à l'avantage de ces producteurs et prescrivant les livres et registres à tenir ainsi que les renseignements à fournir à la Commission par ces producteurs ou pour leur compte. 1966-67, c. 34, art. 13.

DÉPENSES

Frais
d'administration
payés sur les
crédits votés

14. Toutes les dépenses pour traitements, frais de voyage et d'administration, à l'exclusion de celles qui, de l'avis du Ministre, sont directement imputables aux mesures prises par la Commission pour stabiliser le prix de quel que produit laitier, doivent être payées sur les crédits affectés par le Parlement à cette fin. 1966-67, c. 34, art. 14.

Compte de la
Commission
canadienne du
lait

15. (1) Est établi au Fonds du revenu consolidé un compte spécial appelé Compte de la Commission canadienne du lait, au présent article appelé le «Compte».

Montants
crédités au
compte

(2) Doivent être crédités au Compte

a) tous les deniers reçus par la Commission et provenant de ses opérations;

b) tous les honoraires des permis, tous les droits et toutes les taxes payés à la Commission;

c) tous les prêts consentis à la Commission par le ministre des Finances conformément à l'article 16; et

d) tous les montants payés à la Commission par l'Office de stabilisation des prix agricoles aux termes de la *Loi sur la stabilisation des prix agricoles* en vue de stabiliser le prix de quelque produit laitier.

Montants
imputés sur le
compte

(3) Doivent être payés sur le Fonds du revenu consolidé et débités au Compte

a) toutes les dépenses ressortissant à la présente loi, sauf celles qui doivent être payées conformément à l'article 14; et

b) tous les montants payés au ministre des Finances en remboursement des prêts consentis à la Commission conformément à l'article 16 ou à titre d'intérêt sur de tels prêts.

Limitation

(4) Il ne doit être fait sur le Fonds du revenu consolidé, aux termes du présent article, aucun paiement en excédent du solde au crédit du Compte. 1966-67, c. 34, art. 15.

Prêts à la
Commission

16. (1) A la demande de la Commission, le ministre des Finances peut, sur le Fonds du revenu consolidé et selon les modalités qu'approuve le gouverneur en conseil, consentir des prêts à la Commission en vue de l'exercice de l'un quelconque des pouvoirs de la Commission mentionnés à l'alinéa 9(1)a).

Limitation

(2) Le montant total des prêts consentis aux termes du paragraphe (1) et en circulation à quelque moment que ce soit ne doit pas dépasser trois cents millions de dollars. S.R. c. C-7, art. 16, 1974-75-76, c. 74, Annexe (AGR) crédit 50a.

DISPOSITIONS GÉNÉRALES

Inclusion d'un produit laitier sur la liste de marchandises d'importation contrôlée

17. Le gouverneur en conseil peut inclure sur la liste de marchandises d'importation contrôlée établie aux termes de la *Loi sur les licences d'exportation et d'importation* tout produit laitier dont, à son avis, il est nécessaire de contrôler l'importation en vue de mettre en œuvre quelque mesure prise aux termes de la présente loi pour soutenir le prix d'un produit laitier quelconque ou qui a pour effet d'en soutenir le prix. 1966-67, c. 34, art. 17.

Inspecteurs

18. La Commission peut nommer ou désigner toute personne pour occuper le poste d'inspecteur aux fins de la présente loi. 1966-67, c. 34, art. 18.

Pouvoirs des inspecteurs

19. (1) Un inspecteur peut, à toute heure raisonnable, pénétrer dans un lieu où, d'après ce qu'il croit raisonnablement, se trouve un produit réglementé et requérir de toute personne la production, pour les inspecter, de tous livres, registres ou documents se rapportant à ce produit ou en prendre des copies ou des extraits.

Certificat de désignation

(2) Un inspecteur doit être pourvu par la Commission d'un certificat de nomination ou de désignation et, en pénétrant dans tout lieu prévu au paragraphe (1) doit, s'il en est requis, produire le certificat à la personne qui a la charge des lieux.

Aide à l'inspecteur

(3) Le propriétaire ou les personnes ayant la charge d'un lieu décrit au paragraphe (1) et toute personne qui s'y trouve doivent prêter à l'inspecteur toute aide raisonnable en leur pouvoir pour permettre à l'inspecteur d'exercer ses fonctions en vertu de la présente loi et doivent lui fournir les renseignements qu'il peut raisonnablement exiger concernant tout produit réglementé trouvé dans les lieux. 1966-67, c. 34, art. 19.

Entrave à un inspecteur

20. (1) Nul ne doit entraver ni gêner un inspecteur agissant dans l'exercice des fonctions que lui assigne la présente loi ou un règlement établi en vertu de ladite loi.

Fausse déclaration

(2) Nul ne doit faire une déclaration fausse ou trompeuse, verbalement ou par écrit, à un

inspecteur agissant dans l'exercice des fonctions que lui assigne la présente loi ou un règlement établi en vertu de ladite loi. 1966-67, c. 34, art. 20.

Infractions et
pénalités

21. (1) Toute personne qui a violé une disposition de la présente loi ou d'un règlement établi sous son régime, ou a omis de s'y conformer, ou dont l'employé ou l'agent a violé une telle disposition ou a omis de s'y conformer, est coupable d'une infraction et encourt

a) sur déclaration sommaire de culpabilité, une amende d'au plus cinq cents dollars ou un emprisonnement d'au plus six mois, ou à la fois l'amende et l'emprisonnement; ou

b) sur déclaration de culpabilité sur un acte d'accusation, une amende d'au plus deux mille dollars ou un emprisonnement d'au plus un an, ou à la fois l'amende et l'emprisonnement.

Infraction par
l'employé ou
l'agent

(2) Dans des poursuites pour infraction au présent article, le fait d'établir que l'infraction a été commise par un employé ou un agent de l'accusé, que l'employé ou l'agent soit identifié ou non, constitue une preuve suffisante de l'infraction.

Défense

(3) Lorsqu'il est établi dans toute poursuite pour infraction au présent article que l'infraction a été commise par un employé ou un agent de l'accusé, le fait pour ce dernier d'avoir exercé toute diligence pour prévenir l'accomplissement de l'infraction constitue pour lui un moyen de défense. 1966-67, c. 34, art. 21.

RAPPORT AU PARLEMENT

Rapport au
Parlement

22. La Commission doit, dans les trois mois qui suivent la fin de chaque année financière, soumettre au Ministre, sous la forme que ce dernier peut prescrire, un rapport annuel des opérations financières et des autres mesures prises en vertu de la présente loi, et le Ministre doit présenter le rapport au Parlement dans un délai de quinze jours après qu'il a été reçu ou, si le Parlement n'est pas alors en session, l'un des quinze premiers jours où le Parlement siège par la suite. 1966-67, c. 34, art. 22.

CHAPTER C-7

An Act to provide for the establishment of a
dairy commission for Canada

SHORT TITLE

Short title

1. This Act may be cited as the *Canadian Dairy Commission Act*. 1966-67, c. 34, s. 1.

INTERPRETATION

Definitions

2. In this Act

"Commission"
«Commission»

"Commission" means the Canadian Dairy Commission established by this Act;

"dairy product"
«produit laitier»

"dairy product" means milk, cream, butter, cheese, condensed milk, evaporated milk, milk powder, dry milk, ice-cream, malted milk, sherbet, or any other product manufactured wholly or mainly from milk;

"market"
«commercialiser»

"market" means to market in interprovincial or export trade;

"milk",
"cream"
«lait»

"milk" means milk from cows and "cream" means cream derived from such milk;

"Minister"
«Ministre»

"Minister" means the Minister of Agriculture;

"place"
«lieu»

"place" includes any vehicle, vessel, railway car or aircraft;

"regulated product"
«produit réglementé»

"regulated product" means a dairy product the marketing of which is regulated or prohibited by regulations made under this Act. 1966-67, c. 34, s. 2.

CANADIAN DAIRY COMMISSION

Commission
established

3. (1) There shall be a corporation to be known as the Canadian Dairy Commission consisting of three members appointed by the Governor in Council to hold office during pleasure.

Chairman and
Vice-Chairman

(2) The Governor in Council shall designate one of the members to be Chairman of the Commission and one of the members to be Vice-Chairman of the Commission.

Chief executive
officer

(3) The Chairman is the chief executive officer of the Commission.

Remuneration and expenses	(4) Each member of the Commission may be paid such salary or other remuneration as is fixed by the Governor in Council, and may be paid such travelling and living expenses incurred by him in connection with the performance of his duties as are fixed by the Governor in Council.
Retirement age	(5) A member ceases to hold office upon reaching the age of seventy years.
Temporary substitute member	(6) If any member of the Commission is absent or unable to act, the Governor in Council may appoint a temporary substitute member for such term and upon such conditions as the Governor in Council prescribes.
Head office	(7) The head office of the Commission shall be in the city of Ottawa, but meetings of the Commission may be held at such other places as the Commission may decide. 1966-67, c. 34, s. 3.
Agent of Her Majesty	4. (1) The Commission is for all purposes of this Act an agent of Her Majesty, and its powers under this Act may be exercised by it only as such agent.
Contracts	(2) The Commission may, on behalf of Her Majesty, enter into contracts in the name of Her Majesty or in the name of the Commission.
Property	(3) Property acquired by the Commission is the property of Her Majesty and title thereto may be vested in the name of Her Majesty or in the name of the Commission.
Actions	(4) Actions, suits or other legal proceedings in respect of any right or obligation acquired or incurred by the Commission on behalf of Her Majesty, whether in its name or in the name of Her Majesty, may be brought or taken by or against the Commission in the name of the Commission in any court that would have jurisdiction if the Commission were not an agent of Her Majesty. 1966-67, c. 34, s. 4.

CONSULTATIVE COMMITTEE

Consultative Committee

5. (1) The Minister shall appoint a Consultative Committee consisting of a chairman and eight other members.

Tenure of members

(2) Each of the members of the Consultative Committee shall be appointed for a term not exceeding three years, except that of those members first appointed three shall be appointed for a term of two years, three shall be appointed for a term of three years and three shall be appointed for a term of four years. 1966-67, c. 34, s. 5.

Functions of Consultative Committee

6. (1) The Consultative Committee shall meet at such times as are fixed by the Commission and shall advise the Commission on such matters relating to the production and marketing of dairy products as are referred to it by the Commission.

Remuneration and expenses

(2) The members of the Consultative Committee may be paid for their services such remuneration and expenses as are fixed by the Governor in Council. 1966-67, c. 34, s. 6.

STAFF

Officers and employees

7. (1) The Commission may
(a) appoint such officers and employees as are necessary for the proper conduct of the work of the Commission; and
(b) prescribe the duties of such officers and employees and, subject to the approval of the Treasury Board, prescribe the conditions of their employment.

Salaries and expenses of staff

(2) The officers and employees of the Commission appointed as provided in subsection (1) shall be paid such salaries and expenses as are fixed by the Commission with the approval of the Treasury Board. 1966-67, c. 34, s. 7.

OBJECTS OF THE COMMISSION

Objects of Commission

8. The objects of the Commission are to provide efficient producers of milk and cream with the opportunity of obtaining a fair return

for their labour and investment and to provide consumers of dairy products with a continuous and adequate supply of dairy products of high quality. 1966-67, c. 34, s. 8.

POWERS OF COMMISSION

Powers

9. (1) Subject to and in accordance with any regulations made under this Act, the Commission may

(a) purchase any dairy product and package, process, store, ship, insure, import, export, or sell or otherwise dispose of any dairy product purchased by it;

(b) make payments for the benefit of producers of milk and cream for the purpose of stabilizing the price of those products, which payments may be made on the basis of volume, quality or on such other basis as the Commission deems appropriate;

(c) make investigations into any matter relating to the production, processing or marketing of any dairy product, including the cost of producing, processing or marketing that product;

(d) undertake and assist in the promotion of the use of dairy products, the improvement of the quality and variety thereof and the publication of information in relation thereto; and

(e) do all such acts and things as are necessary or incidental to the exercise of any of its powers or the carrying out of any of its functions under this Act.

Inquiries

(2) For the purpose of carrying out any investigation under paragraph (1)(c), the Commission has all the powers of a commissioner appointed under Part I of the *Inquiries Act*.

Rules of procedure

(3) The Commission may make such rules as it deems necessary for the regulation of its proceedings, for the fixing of a quorum for any of its meetings and generally for the conduct of its activities under this Act. 1966-67, c. 34, s. 9.

DUTIES OF COMMISSION

Commission to submit program to Minister

10. (1) Each year, following determination by the Governor in Council pursuant to the *Agricultural Stabilization Act* of the total amount to be paid by the Agricultural Stabilization Board to the Commission for the purpose of stabilizing the price of milk and cream, the Commission shall submit to the Minister an outline of the program by which it proposes to carry out its functions under this Act for the following fiscal year.

Manner of carrying out functions

(2) The Commission shall carry out its functions under this Act in a manner that will achieve its objects and meet its obligations from the moneys available to it under this Act. 1966-67, c. 34, s. 10.

Directions from Governor in Council or Minister

11. In exercising its powers under this Act or the regulations in relation to the importation or exportation of any dairy product, the Commission shall comply with any directions from time to time given to it by the Governor in Council or the Minister. 1966-67, c. 34, s. 11.

REGULATIONS

Regulations

12. (1) The Governor in Council may make regulations regulating the marketing of any dairy product, including regulations

(a) providing for the marketing of any dairy product on a quota basis;

(b) designating the agencies through which any regulated product shall be marketed;

(c) providing for the issue of licences to persons engaged in the production or processing of a regulated product for market, prescribing the fees therefor and providing for cancellation or suspension of licences;

(d) prohibiting persons from engaging in the marketing of any dairy product, or any class, variety or grade thereof, in whole or in part except under the authority of a licence;

(e) prescribing the books and records to be kept by persons engaged in the production or processing of a regulated product for market and the information to be furnished by such persons;

(f) authorizing the Commission to fix, impose and collect levies or charges from persons engaged in the marketing of any dairy product or the production or processing of a regulated product for market and for such purposes to classify such persons into groups, fix the levies or charges payable by the members of the different groups and to use such levies or charges for the purpose of carrying out its functions under this Act;

(g) providing for the seizure and disposal of any regulated product marketed in contravention of any regulation made under this section; and

(h) generally, for carrying out the purposes and provisions of this Act.

Regulation may
be general or
specific

(2) A regulation made under subsection (1) may be general or restricted to a specific dairy product, area, or group or class of persons. 1966-67, c. 34, s. 12.

Idem

13. The Governor in Council may make regulations requiring the registration of producers of milk and cream as a condition of the making of any payment under paragraph 9(1)(b) for the benefit of such producers and prescribing the books and records to be kept and the information to be furnished to the Commission by or on behalf of such producers. 1966-67, c. 34, s. 13.

EXPENDITURES

Administration
expenses paid
out of
appropriations

14. All expenditures for salaries, travelling expenses and expenses of administration, excluding those that in the opinion of the Minister are directly attributable to action taken by the Commission to stabilize the price of any dairy product, shall be paid out of moneys appropriated by Parliament for the purpose. 1966-67, c. 34, s. 14.

Canadian Dairy
Commission
Account

15. (1) There shall be established in the Consolidated Revenue Fund a special account to be known as the Canadian Dairy Commission Account, in this section called the "Account".

Credits to
Account

- (2) There shall be credited to the Account
- (a) all moneys received by the Commission from its operations;
 - (b) all licence fees, levies and charges paid to the Commission;
 - (c) all loans made to the Commission by the Minister of Finance pursuant to section 16; and
 - (d) all amounts paid to the Commission by the Agricultural Stabilization Board under the *Agricultural Stabilization Act* for the purpose of stabilizing the price of any dairy product.

Charges to
Account

- (3) There shall be paid out of the Consolidated Revenue Fund and charged to the Account
- (a) all expenditures under this Act, except those to be paid pursuant to section 14; and
 - (b) all amounts paid to the Minister of Finance in repayment of loans made to the Commission pursuant to section 16 or as interest on any such loans.

Limitation

- (4) No payment shall be made out of the Consolidated Revenue Fund under this section in excess of the amount of the balance to the credit of the Account. 1966-67, c. 34, s. 15.

Loans to
Commission

- 16.** (1) At the request of the Commission, the Minister of Finance may, out of the Consolidated Revenue Fund, make loans to the Commission on such terms and conditions as are approved by the Governor in Council for the purpose of exercising any of the powers of the Commission described in paragraph 9(1)(a).

Limitation

- (2) The total amount outstanding at any time of loans made under subsection (1) shall not exceed three hundred million dollars. R.S., c. C-7, s. 16; 1974-75-76, c. 74, Sch. (AGR) vote 50a.

GENERAL

Inclusion of
dairy product
on Import
Control List

- 17.** The Governor in Council may include on the Import Control List established under the *Export and Import Permits Act* any dairy

product the import of which he deems it necessary to control for the purpose of implementing any action taken under this Act to support the price of that dairy product or that has the effect of supporting the price of that dairy product. 1966-67, c. 34, s. 17.

Inspectors

18. The Commission may appoint or designate any person as an inspector for the purposes of this Act. 1966-67, c. 34, s. 18.

Powers of
inspector

19. (1) An inspector may at any reasonable time enter any place in which he reasonably believes there is any regulated product and may require any person to produce for inspection or for the purpose of obtaining copies thereof or extracts therefrom, any books, records or documents relating to that product.

Certificate of
designation

(2) An inspector shall be furnished by the Commission with a certificate of appointment or designation and on entering any place under subsection (1) shall, if so required, produce the certificate to the person in charge thereof.

Assistance to
inspector

(3) The owner or persons in charge of any place described in subsection (1) and every person found therein shall give an inspector all reasonable assistance in his power to enable the inspector to carry out his duties and functions under this Act and shall furnish him with such information with respect to any regulated product found therein as he may reasonably require. 1966-67, c. 34, s. 19.

Obstruction of
inspector

20. (1) No person shall obstruct or hinder an inspector in the carrying out of his duties or functions under this Act or any regulation made thereunder.

False statement

(2) No person shall make a false or misleading statement either verbally or in writing to an inspector engaged in carrying out his duties or functions under this Act or any regulation made thereunder. 1966-67, c. 34, s. 20.

Offences and
penalties

21. (1) Every person who, or whose employee or agent, contravenes or fails to comply with any provision of this Act or any regulation made thereunder is guilty of an offence and liable

(a) on summary conviction to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding six months or to both; or

(b) on conviction upon indictment to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding one year or to both.

Offence by
employee or
agent

(2) In a prosecution for an offence under this section it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused whether or not the employee or agent is identified.

Defence

(3) Where it is established in any prosecution for an offence under this section that the offence was committed by an employee or agent of the accused, it is a defence to the accused that he exercised all due diligence to prevent the commission of the offence. 1966-67, c. 34, s. 21.

REPORT TO PARLIAMENT

Report to
Parliament

22. The Commission shall, within three months after the termination of each fiscal year, submit to the Minister in such form as he may prescribe, an annual report of the financial transactions and other actions taken under this Act, and the Minister shall lay the report before Parliament within fifteen days after the receipt thereof or, if Parliament is not then sitting, on any of the first fifteen days next thereafter that Parliament is sitting. 1966-67, c. 34, s. 22.

4.

Table of Concordance

NATIONAL DAIRY PRODUCTS COMMISSION ACT

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18	7(1 <i>a</i>)	17	46
19	7(1 <i>b</i>)	18	33
20	7(1 <i>b</i>) and 7(2)	19	33,34,35,36
		20	48,49
21	4(3)	21	47,50,51
22	10(1)	22	37,38
23	10(1)		
24	16(1)		
25	16(2)		
26	14		
27	15(1)		
28	15(2)		

Sections of the revised text	Sections of the present Act	Sections of the present Act	Sections of the revised text
29	15(3) and 15(4)		
30	3(7)		
31	9(3)		
32	9(3)		
33	18 and 19(2)		
34	19(1) and 19(2)		
35	19(1)		
36	19(3)		
37	22		
38	22		
39	5(1)		
40	6(1)		
41	5(1) and 5(2)		
42	5(1)		
43	6(2)		
44	6(1)		
45	12(1), 12(2), and 13		
46	17		
47	21(1)		
48	20(1)		
49	20(2)		
50	21(2)		
51	21(3)		

5.

Revised Text and Explanatory Notes

NATIONAL DAIRY PRODUCTS COMMISSION ACT

Preliminary Remarks

The new structure which we have adopted for the revised text emerges from the table of contents of the Act. It would seem desirable that such a table of contents accompany each Act in our statutes.

The new draft stays within the scope of the present Act. It contains no cross-references from one section to another. The elements that make up the revised Act are now grouped together in fifty-one sections, generally shorter than the original ones. Unless otherwise stated, the comments follow the order of the new sections.

Finally, an index has been added to the draft Act, thus providing the occasional user, as well as the specialist, with a very useful working tool.

Title

We have eliminated the long title, and hence the section incorporating the short title. In our opinion, a single title suffices. Moreover, this is the practice adopted by most provincial legislatures.

The word “national” is better suited to an agency working within the country. On the other hand, “Canadian” would be preferable in the case of an agency with a principally extra-national purpose.

We have substituted «produits laitiers» (dairy products) for «lait» (milk) because it is a better translation of the word “dairy” and is closer to

the scope of the Act, for it does more than just establish the Commission. (*Translator's note*: A literal translation of the title of the French version of the present Act, *Loi sur la Commission canadienne du lait*, would read "Canadian Milk Commission Act".)

CHAPITRE PREMIER

INTERPRÉTATION

Définition
«**produit
laitier**»
"dairy
product"

1. Dans la présente loi, on entend par «produit laitier», le lait de vache, la crème de ce lait, un produit principalement ou entièrement à base de ce lait, ainsi que le sorbet.

CHAPTER ONE

INTERPRETATION

Definition
"dairy
product"
«produit
laitier»

1. In this Act, "dairy product" means milk from cows, cream derived from such milk, a product manufactured wholly or mainly from such milk as well as sherbet.

We have eliminated all the definitions except the above one, because it is essential to an understanding of the Act. The following comments are presented according to the alphabetical order of the definitions as they appear in the existing French Act.

«commercialiser»
"market"

This is a substantive provision disguised as a definition. We have rejected this improper practice; the jurisdiction of the Commission with respect to marketing is now dealt with in section 5 of the new version. The pseudo-definition of the present Act is misleading in other respects because it does not define anything in a lexicographical manner. It does not inform the citizen of the kind of marketing that comes under the statute.

«Commission»
“*Commission*”

There is no allusion made to any other Commission in the Act. The risk of confusion being nil, we have eliminated the definition of this word.

«lait», «produit laitier»
“*milk*”, “*dairy product*”

We have kept only one interpretative provision combining two concepts. However, when the context requires it, we repeat that we are dealing with cow’s milk. We are very doubtful about whether it is appropriate to incorporate *sherbet* into the category of dairy products. Of course, we understand that it might well be awkward to establish a National Sherbet Commission.

«lieu»
“*place*”

This definition appears to have a rather unfortunate case-law origin. In any event, it constitutes an abuse of the definition technique used in statutes and cannot be disguised by the term “interpretation”. This expedient does not serve the purpose one might expect of a good dictionary. Its aim is so far removed from rigorous lexicography that its use must be avoided for fear of being accused of confusing the two concepts. In fact, it is obvious that this technique is nothing more than an easy way out of a substantive problem.

«Ministre»
“*Minister*”

Two ministers are mentioned in this text. It thus seems advisable, without being unduly burdensome, to mention their full titles.

«produit laitier»
“*dairy product*”

See the comments above on «lait», «produit laitier» (“*milk*”, “*dairy product*”).

«produit réglementé»
“*regulated product*”

This expression appears only twice in the body of the text. Therefore, we have provided the necessary details on both occasions.

CHAPITRE DEUXIÈME

L'ORGANISME

Création de
la commission

2. Une Commission nationale des
produits laitiers est créée.

CHAPTER TWO

ORGANIZATION

Commission
established

2. A National Dairy Products Com-
mission is established.

Throughout the text we have followed the principle according to which each idea, in order to be easily located and understood, merits one sentence, and even, one section to itself. As a matter of priority, we have stated that the Act establishes the agency. We opted to put the subject before the verb, adopting a more common drafting style.

However, in those cases where the subject is quite long (a long list of items, for example), it is preferable to place the verb at the beginning of the sentence. This is what we have done in sections 28 and 29 of the draft Act.

Although the term «corporation» (‘‘corporation’’) has long been decried as being an anglicism, it represents a common-law concept that is essential to the life of Canadian institutions. However, since there exists neither a consensus nor a definition with respect to the designation of a moral person in public law, and since the term «corporation» is not essential to the Act under study, we have eliminated it. We believe nonetheless that a study of the concepts of «corporation», «société», «société commerciale» and so forth, is necessary in order to filter out their various meanings. (*Translator's note*: All three terms are French variations of the English term ‘‘corporation’’.)

Siège

3. La commission a son siège dans
la ville d'Ottawa.

Head office

3. The head office of the Commis-
sion is in the city of Ottawa.

The word «siège» (instead of «siège social») suffices, since the Commission is not, strictly speaking, a «société». The sentence has been simplified: we have devoted one section to the location of the head office and relegated the rest of the paragraph to section 30 of the draft.

The expression «en la ville de» ('in the city of') is archaic. We have both eliminated it and introduced the active voice.

Compétence

Objet de la
commission

4. L'objet de la commission est, d'une part, de permettre aux producteurs de lait de vache et de crème de ce lait dont l'entreprise est viable d'obtenir une juste rétribution de leur travail et de leur investissement et, d'autre part, d'assurer aux consommateurs un approvisionnement continu et suffisant de produits laitiers de bonne qualité.

Jurisdiction

Object of the
Commission

4. The object of the Commission is twofold: first, to allow efficient producers of milk from cows and cream from such milk to obtain a fair return for their labour and investment; and second, to provide consumers with a continuous and adequate supply of quality dairy products.

The term «lait» (milk) is modified here because reference to it in the definition section was eliminated. The word «viable» (efficient) was substituted for «efficace» ('efficient'); the new word is perhaps not much more evocative, but it is more common.

Compétence

5. La commission est compétente en matière de commercialisation des produits laitiers sur le marché interprovincial et sur le marché d'exportation.

Jurisdiction

5. The Commission has jurisdiction over marketing of dairy products in interprovincial and export trade.

This section is the result of converting a definition into a substantive provision, that which it is in reality.

Attributions

6. Sous réserve des dispositions de la présente loi et des règlements, la commission peut faire ce qui est nécessaire, principalement ou accessoirement, à la réalisation de son objet, notamment

a) acheter et aliéner des produits laitiers,

b) emballer, traiter, emmagasiner, expédier, assurer, importer, exporter les produits laitiers qu'elle a achetés,

c) fournir une aide financière directe ou indirecte aux producteurs de lait de vache et de crème de ce lait, selon des critères qu'elle juge appropriés, dans le but de stabiliser les prix,

d) faire des recherches concernant la production, le traitement ou la commercialisation des produits laitiers,

e) promouvoir la consommation de produits laitiers, l'amélioration de leur qualité et leur diversification,

f) informer le public sur la consommation, la qualité et la diversité des produits laitiers.

Powers

6. Subject to this Act and its regulations, the Commission may do whatever is necessary, mainly or incidentally, to carry out its object, especially:

(a) purchase dairy products or dispose of them;

(b) package, process, store, ship, insure, import, and export dairy products purchased by it;

(c) provide direct or indirect financial aid to producers of milk from cows or cream from such milk in accordance with criteria it deems appropriate for the purpose of stabilizing prices;

(d) investigate any matter relating to the production, processing or marketing of dairy products;

(e) promote the use of dairy products and the improvement of their quality and variety; and

(f) inform the public on the use, quality and variety of dairy products.

Paragraph 9(1)(e) of the present Act has been incorporated into the first lines of this section; this gives the provision a generic appearance rather than that of an afterthought attempting to provide against all eventualities. See in this regard the comments in chapter IV.

In order to list the ideas according to their affinity of meaning, we have reorganized the paragraphs.

From the present list in paragraph 9(1)(a), only the verbs «acheter» ('purchase') and «aliéner» ('dispose of') have been grouped together. If only the verb «aliéner» has been retained from the text of the Act in force, it is because of its generic character in relation to «vendre» ('sell'). He who sells, disposes. The power of disposition includes that of selling.

The provisions to «empaqueter, traier, emmagasiner, expédier, assurer, importer, exporter» ('package, process, store, ship, insure, import, export') dairy products purchased by the Commission, have been placed in a paragraph of their own.

We prefer abstract principles and concepts to the endless list of concrete examples fizzling out at the end, as is the case in paragraph 9(1)(b) of the present Act. Indeed, the expression «faire des paiements au profit de» ('make payments for the benefit of') seems to us to be a

rather difficult formulation to understand. Furthermore, a listing of criteria ending with «ou tout autre barème» (“or on such other basis”) can only hold a hypothetical pedagogical value. It is preferable to retain from the listing only that element which includes all the others, however vague it is. Whence our choice.

As in the case of paragraph 9(1)(b), we have simplified paragraph 9(1)(c) of the present Act.

In the case of paragraph 9(1)(d) of the present Act, there is also a simplifying amendment, as well as a splitting of the paragraph into two distinct ideas — promotion and information — the former is treated in the revised paragraph 6(e) and the latter in 6(f).

Pouvoirs
d'enquête

7. La commission possède, pour les recherches concernant la production, le traitement ou la commercialisation des produits laitiers, les pouvoirs d'un commissaire nommé en vertu de la Partie I de la *Loi sur les enquêtes*.

Powers of
inquiry

7. The Commission has, for the purpose of investigation of any matter related to producing, processing, or marketing dairy products, the powers of a commissioner appointed under Part I of the *Inquiries Act*.

A minor touch-up to render the text more elegant.

Directives du
gouverneur en
conseil ou du
Ministre

8. Dans l'exercice de ses attributions en matière d'importation ou d'exportation de produits laitiers, la commission se conforme aux directives du gouverneur en conseil ou du ministre de l'Agriculture.

Directions
from the
Governor in
Council or
the Minister

8. In exercising its powers or in carrying out its duties with respect to the importation or exportation of dairy products, the Commission shall comply with directions given by the Governor in Council or by the Minister of Agriculture.

The plural «aux directives» (“with any directions”) avoids the use of the indefinite adjective «tout» (any), which comes up too frequently in statutes, particularly in those translated from, or inspired by, previous legislation.

The words «à l’occasion» in the present Act are a translation of “from time to time”, which relates to a British jurisprudential creation of the nineteenth century according to which a conferred power is extinguished upon its first use. From this stems the need to specify that the delegatee may exercise a power more than once. The current meaning of the verb «pouvoir» (may) in French is not restrictive in the sense mentioned above.

The sentence proposed is simpler, having been amended according to the preceding observations.

Mandataire de
Sa Majesté

9. La commission est mandataire de
Sa Majesté et n’exerce ses pouvoirs qu’à
ce titre.

Agent
of Her
Majesty

9. The Commission is an agent of
Her Majesty and only exercises its powers
as such.

We simplified this section, and the result is a draft that is both more concise and more contemporary.

Contrats

10. La commission conclut les con-
trats pour le compte de Sa Majesté, en
son nom ou au nom de Sa Majesté.

Contracts

10. The Commission enters into
contracts on behalf of Her Majesty, in the
name of the Commission or in the name
of Her Majesty.

The proposed section is simpler.

The verb «pouvoir» (‘‘may’’) has given way to a present tense imperative («conclut», enters). Nonetheless, the imperative only has bearing on the form that the Commission should adopt for its contracts. It does not put the Commission under any obligation to issue contracts, but leaves this opportunity open.

Action en
justice

11. La commission peut intenter une action en justice, en son nom ou au nom de Sa Majesté, à l'égard d'un droit acquis ou d'une obligation contractée pour le compte de Sa Majesté.

Une personne peut intenter une action en justice contre la commission.

Est compétente à juger une action intentée par ou contre la commission, la cour dont la juridiction s'exercerait si la commission n'était pas mandataire de Sa Majesté.

Legal
proceedings

11. The Commission may take, in its name or in the name of Her Majesty, legal proceedings with respect to any right acquired or obligation incurred on behalf of Her Majesty.

Anyone may take legal proceedings against the Commission.

Any court which would have jurisdiction in a legal proceeding taken by or against the Commission if the Commission were not an agent of Her Majesty has jurisdiction.

We were perplexed for a long time in the face of the jumble of ideas in the present Act:

« . . . peuvent être intentées ou engagées par ou contre la Commission au nom de cette dernière, . . . » (‘‘. . . may be brought or taken by or against the Commission in the name of the Commission . . .’’)

Taking the words at face value, how is one to imagine legal proceedings brought against the Commission, by the Commission?

In sorting out each idea contained in the present subsection we came up with three sentences whose meaning is easily accessible. Moreover, the words «actions, poursuites ou autres procédures judiciaires» (“Actions, suits or other legal proceedings”) in the present Act are now summed up by the words «action en justice» (legal proceedings) which cover every kind of proceeding that can be brought against someone.

The difference between «intenter» (to bring) and «engager» (to take) with regard to (law)suits is not obvious to us. This seems to be one of the traditional *doublets* so dear to the English language, and which is imperfectly rendered by a slavish translation.

Composition

Composition

12. La commission est composée de trois commissaires nommés par le gouverneur en conseil. Leur fonction est amovible.

Composition

Composition

12. The Commission consists of three commissioners appointed by the Governor in Council to hold office during pleasure.

We have devoted a separate section to each idea contained in section 3 of the present Act. The principal idea, the establishment of the Commission, has been dealt with in the proposed section 2, while the secondary ideas are found in sections 12 to 17 of the draft.

We prefer the title «commissaire» (commissioner) to that of «membre» (“member”), as it is more appropriate in this case and reflects the usual preference of holders of similar posts.

Président et
vice-président

13. Le gouverneur en conseil désigne parmi les commissaires un président et un vice-président.

President
and
vice-president

13. The Governor in Council designates a president and a vice-president from among the commissioners.

The simplification is evident.

Administrateur
en chef

14. Le président est l'administrateur en chef de la commission.

Chief
executive

14. The president is the chief executive officer of the Commission.

In subsection 3(3) of the present Act, the president is referred to as the «fonctionnaire administratif en chef» ("chief executive officer"). But «fonctionnaire» also means public servant in French, and it is high time that the term be limited to apply to those persons whose status is covered by the *Public Service Employment Act*. The terms of the present Act lead one to the mistaken belief that the president is automatically a member of the public service.

Retraite

15. Un commissaire cesse d'occuper son poste dès qu'il atteint soixante-dix ans.

Retirement

15. A commissioner ceases to hold office upon reaching the age of seventy years.

As in section 14, «membre» ("member") is replaced by «commissaire» (commissioner).

Remplaçant
provisoire

16. En cas d'absence ou d'incapacité d'agir d'un commissaire, le gouverneur en conseil peut lui nommer, aux conditions qu'il prescrit, un remplaçant provisoire.

Temporary
substitute

16. Where a commissioner is absent or unable to act, the Governor in Council may appoint a temporary substitute commissioner upon such conditions as he prescribes.

We prefer nouns to verbs, for reasons both of economy and of style.

It seems evident to us that the word «provisoire» (temporary), modifying the word «remplaçant» (substitute), indicates an implicit power of the Governor in Council to limit the length of the term of appointment. For this reason, the words «pour la durée» (“for such term”) appearing in the present Act have been eliminated.

Rémunération
et indemnités

17. Le gouverneur en conseil fixe la rémunération et les indemnités des commissaires.

Remuneration
and expenses

17. The Governor in Council fixes the remuneration and expenses of commissioners.

The simplification is obvious. The word «indemnités» (expenses), commonly used in the administrative, legal and fiscal fields, largely covers the items listed in the present Act.

Why say «traitement ou autre rémunération» (“such salary or other remuneration”) in the present Act, since salary is a form of remuneration?

CHAPITRE TROISIÈME

RESSOURCES DE L'ORGANISME

Ressources humaines

Personnel

18. La commission nomme le personnel nécessaire à la réalisation de son objet.

CHAPTER THREE

RESOURCES

Human Resources

Personnel

18. The Commission appoints the personnel necessary for carrying out its object.

Subsection 7(1) of the present Act has been divided into three parts which are restated in draft sections 18 to 20, inclusively. The English punctuation, which requires that the coordinating conjunction «et» (“and”) be preceded by a semi-colon, has thus disappeared.

It seems to us that the word «convenablement» (“for the proper conduct of”, or literally, properly) introduces an element of subjectivity. The interpretation of adverbs poses so many problems that one should avoid using them, especially when they imply value judgments.

The word «nécessaire» (necessary) also introduces a considerable latitude in interpretation, but in the draft text we have shifted the emphasis of this element from the qualitative context («convenablement») to the personnel necessary («personnel nécessaire», personnel necessary), because of its quantitative connotation that is easier to handle.

Favouring the present imperative, the word «peut» (“may”) has disappeared. None other than the Commission is authorized by statute to appoint its personnel.

Fonctions

19. La commission détermine les fonctions de son personnel.

Duties

19. The Commission prescribes the duties of its personnel.

This section corresponds to the first part of paragraph 7(1)(b) of the present Act.

Conditions d'emploi

20. La commission fixe, avec l'approbation du Conseil du Trésor, les conditions d'emploi, la rémunération et les indemnités du personnel.

Conditions
of
employment

20. The Commission prescribes, with the approval of the Treasury Board, the conditions of employment of its personnel and fixes their salaries and expenses.

This section combines the last part of paragraph 7(1)(b) and all of subsection 7(2).

Ressources matérielles

Biens

21. Les biens que la commission acquiert au nom de Sa Majesté ou en son nom propre sont dévolus à Sa Majesté.

Material Resources

Property

21. Property acquired by the Commission, whether in its name or in the name of Her Majesty, is the property of Her Majesty.

Use of the active voice renders the provision more concrete.

Ressources financières

Programme
annuel

22. La commission soumet chaque année au ministre de l'Agriculture les grandes lignes de son programme budgétaire pour l'exercice suivant.

Financial Resources

Annual
program

22. Each year the Commission shall submit to the Minister of Agriculture an outline of its program for the following fiscal year.

A present imperative is used here, thus eliminating the passive style so typical of English drafting. Also, the word «exercice» replaces the anglicism «année financière» (fiscal year).

Finally, subsection 10(2) of the present Act has been eliminated. The contents of this subsection can be deduced from the context. If the basis of our decision raises doubts, the reflection it will prompt will reveal the importance of clarity and order in the presentation of details and particulars.

It seemed to us that stating the obvious in a statute should be avoided. It is of course evident that the Commission will «s'acquitter de ses obligations à l'aide des deniers dont elle peut disposer aux termes de la présente loi» ("meet its obligations from the moneys available to it under this Act"). Therefore, it is not necessary to state this in the text.

Montant payable
par l'Office de
stabilisation
des prix
agricoles

23. La commission établit son programme budgétaire après que le gouverneur en conseil a déterminé, conformément à la *Loi sur la stabilisation des prix agricoles*, le montant payable à la commission par l'Office de stabilisation des prix agricoles, en vue de stabiliser le prix d'un produit laitier.

Amount
payable
by the
Agricultural
Stabilization
Board

23. The Commission establishes its budget after the Governor in Council has, pursuant to the *Agricultural Stabilization Act*, determined the amount payable to the Commission by the Agricultural Stabilization Board for the purpose of stabilizing the price of a dairy product.

This section covers the second idea contained in subsection 10(1) of the present Act.

Prêts à la
commission

24. À la demande de la commission, le ministre des Finances peut, à même le Fonds du revenu consolidé et selon les modalités qu'approuve le gouverneur en conseil, lui consentir des prêts pour acheter des produits laitiers, les emballer, traiter, emmagasiner, expédier, assurer, importer, exporter et aliéner.

Loans
to the
Commission

24. At the request of the Commission, the Minister of Finance may make loans to the Commission out of the Consolidated Revenue Fund and on such terms and conditions as are approved by the Governor in Council for the purchasing, packaging, processing, storing, shipping, insuring, importing, exporting, or disposing of dairy products.

We have simplified the style, eliminated the words «l'un quelconque» which are a faithful replica of “any” in English, and eliminated the cross-reference by succinctly restating the substance of the section cited in the present section.

Maximum
des prêts

25. Le total des prêts que le ministre des Finances consent à la commission ne dépasse jamais trois cents millions de dollars.

Maximum
loans

25. The total amount of loans that the Minister of Finance makes to the Commission shall not exceed three hundred million dollars.

The word «doit» (“shall”) is replaced by a present imperative.

Simplification is achieved by eliminating the word «montant» (“amount”) and the words «et en circulation» (“outstanding”) in the present Act. There is further simplification through the replacement of the words «à quelque moment que ce soit» (“at any time”) by the word «jamais» (literally, never; translated here, not).

The draft that we propose, in spite of the elimination of the words «et en circulation» (“outstanding”), suffices to make it understood that, to look at the situation from another point of view, the Commission can never owe more than three hundred million dollars at a time with regard to loans allowed it.

Dépenses

26. La commission effectue ses dépenses à même les crédits que le Parlement affecte à cette fin, à l'exclusion de celles qui, de l'avis du ministre de l'Agriculture, sont directement imputables aux mesures que prend la commission pour stabiliser le prix d'un produit laitier.

Expenditures

26. The Commission pays for its expenditures out of money appropriated for such purpose by Parliament excluding those expenditures that the Minister of Agriculture determines are directly attributable to action taken by the Commission to stabilize the price of a dairy product.

The active voice is used.

The principal clause is no longer split up.

Following our preference, the principle precedes the details or exceptions.

The anglicism «payées sur les crédits» ("paid out of moneys") is replaced by an expression that is closer to proper French.

Compte

27. Un compte de la Commission nationale des produits laitiers est établi au Fonds du revenu consolidé.

Account

27. An account for the National Dairy Product Commission is established in the Consolidated Revenue Fund.

The formulation is more contemporary.

The definition of the word «Compte» ("Account") has been eliminated because it appears only three times in consecutive sections.

Montants
crédités
au compte

28. Sont crédités au compte

a) les deniers perçus par la commission et provenant de ses activités,

b) les droits des permis et les taxes payés à la commission,

c) les prêts consentis à la commission par le ministre des Finances,

d) le montant payé à la commission par l'Office de stabilisation des prix agricoles aux termes de la *Loi sur la stabilisation des prix agricoles*, en vue de stabiliser le prix d'un produit laitier.

Credits
to the
account

28. There shall be credited to the account:

(a) moneys received by the Commission from its operations;

(b) licence fees and charges paid to the Commission;

(c) loans made to the Commission by the Minister of Finance; and

(d) amounts paid to the Commission by the Agricultural Stabilization Board pursuant to the *Agricultural Stabilization Act* for the purpose of stabilizing the price of a dairy product.

Our preference for the present indicative of an imperative nature is again evident here.

We prefer the verb «percevoir» («perçus») to «recevoir» («reçus»), for the English “received”. The verb «percevoir» implies that what is received was owing. The verb «recevoir» does not have this connotation.

French punctuation has been adopted.

The word «tous» (“all”) has been eliminated, the definite article itself having an unlimited scope in the expression «les deniers perçus» (moneys received).

The word «droits» (fees) seems to be more appropriate than «honoraires» (“fees”), which is reserved for the remuneration of professionals.

The word «activités» (operations) replaces the anglicism «opérations» (for “operations”).

In restating paragraph 15(2)(d) of the present Act the word «quelque» has disappeared. It was a translation of “any”; an indefinite article («un», a) suffices in French.

The coordinating conjunction «et» (“and”) has disappeared in French. It seems to us that it is of no use in listing things. Its cumulative value is not necessary in this type of list. Indeed, the context sufficiently indicates that there are no alternative interpretations; this eliminates having to ask where to put a coordinating conjunction in the context of paragraphing.

Montants
imputés
au compte

29. Sont payés à même le Fonds du revenu consolidé et débités au compte, mais sans en excéder le crédit,

a) les dépenses qui, de l’avis du ministre de l’Agriculture, sont directement imputables aux mesures que prend la commission pour stabiliser le prix d’un produit laitier,

b) les montants payés au ministre des Finances en remboursement du principal et des intérêts des prêts qu’il a consentis à la commission.

Charges
to the
account

29. There shall be paid out of the Consolidated Revenue Fund and charged to the account, but without exceeding its credit,

(a) expenditures that the Minister of Agriculture determines are directly attributable to action taken by the Commission to stabilize the price of any dairy product; and

(b) amounts reimbursed to the Minister of Finance as principal or interest on loans made to the Commission.

«Doivent être» (“there shall be”), from subsection 15(3) of the present Act, becomes «sont» (There shall be).

«Payés sur» (“paid out of”) becomes «payer à même» (paid out of).

The English punctuation has disappeared.

The terms «principal et intérêts» (principal or interest) seem to us to be more common and simpler than the formulation in paragraph 15(3)(b) of the present Act.

The adjectives «tous» and «toutes» (“all”) have been eliminated.

As we said before, the coordinating conjunction «et» (“and”) is useless between paragraphs.

CHAPITRE QUATRIÈME

FONCTIONNEMENT DE L'ORGANISME

Réunions

30. La commission tient ses réunions où elle le juge à propos.

CHAPTER FOUR

OPERATION

Meetings

30. The Commission holds its meetings wherever it so decides.

The active voice is now used.

The head office of the Commission not necessarily being the place where meetings are held, the two notions now appear separately in sections 3 and 30 of the revised text.

We wanted to highlight the full latitude given to the Commission by the legislator.

Règlements
internes

31. La commission se donne les règlements internes nécessaires à son fonctionnement.

Internal
rules

31. The Commission makes such internal rules as are necessary for its operations.

Subsection 9(3) of the present Act has been divided into two sections to distinguish between the power to make internal rules and to fix the quorum of meetings by such rules.

The expression «nécessaires à son fonctionnement» (necessary for its operations) repeats the last statement in subsection 9(3) «. . . et, en général, pour la conduite . . .» (“ . . . and generally for the conduct of . . .”).

Quorum

32. La commission fixe par règlement interne le quorum de ses réunions.

Quorum

32. The Commission fixes by internal rules the quorum of its meetings.

A priori, the power given in section 32 of the new text could have been deduced from section 31 of the new text. The working group felt, nonetheless, that it was important to emphasize the matter of the quorum. This constitutes a point of view and does not establish a position based on principle.

Inspecteurs

33. La commission nomme des inspecteurs aux fins de la présente loi et leur délivre un certificat de nomination.

Inspectors

33. The Commission appoints inspectors for the purposes of this Act and furnishes them with a certificate of appointment.

The text is simplified. The *doublet* «nommer ou désigner» (“appoint or designate”) in the present Act indicates that the Commission can appoint a person or designate an inspector from among persons already appointed. But the term «désigner» is not necessary, because the Commission does not depend on the Public Service Commission for appointments. The expression «nommer ou désigner» is used in Canadian federal statutes each time a post is filled by the Public Service. This is not the case here, since the Commission appoints inspectors on its own behalf.

Pouvoirs des
inspecteurs

34. Un inspecteur peut, à heure raisonnable, pénétrer dans un lieu où, d’après ce qu’il a raison de croire, se trouve un produit dont la commercialisation est réglementée ou interdite par règlement.

Il produit son certificat de nomination à la demande du responsable des lieux qu’il inspecte.

Powers of
inspectors

34. An inspector may, at any reasonable time, enter a place in which he reasonably believes there is a product the marketing of which is regulated or prohibited by regulation.

The inspector shall produce his certificate if so required by the person in charge of the place he is inspecting.

Two ideas call for two paragraphs.

The scattered elements of section 19 of the present Act have been reorganized. The idea is to be able to group together the power of entry and the conditions of entry, leaving to the following sections what the inspector may do once he is on the premises and has established his standing.

The words «à toute heure» (“at any . . . time”) have been replaced by «à heure» (literally, at a time, translated here as at any . . . time).

Subsection 19(2) of the present Act has been totally amended by removing the passive voice on two occasions and by replacing the anglicism «s'il en est requis» ("if so required") with «à la demande d(e)» (literally, at the request of, translated here as if so required).

By eliminating the cross-reference to subsection 19(1) of the present Act and by using the words «des lieux qu'il inspecte» (of the place he is inspecting), we have simplified the wording of the section.

The granting of certificates of appointment is covered by section 33 of the new text, thus establishing a logical chronological order.

Of course, we used the present indicative («produit») and not the verb «doit» (shall produce) in place of «doit . . . produire» ("shall produce").

Inspection

35. L'inspecteur peut, aux fins d'inspection, exiger la production des documents se rapportant à un produit dont la commercialisation est réglementée ou interdite par règlement et en prendre des copies ou extraits.

Inspection

35. The inspector may require anyone to produce for inspection documents relating to a product the marketing of which is regulated or prohibited by regulation and may make copies of them.

Here, as elsewhere in the draft, we have eliminated the word «tous» ("any") and simplified the expression «livres, registres ou documents» ("books, records or documents") by using the word «documents» (documents), a generic term that includes all the elements of the longer expression.

Aide à
l'inspecteur

36. Le propriétaire ou le responsable des lieux, ainsi que les personnes qui s'y trouvent, fournissent à l'inspecteur l'aide raisonnable, nécessaire à l'exercice de ses fonctions.

Assistance
to
inspector

36. The owner or the person in charge of the place as well as anyone else therein shall give the inspector all reasonable assistance required for the performance of his duties.

The wording is simplified.

The expression «fournir les renseignements» ('furnish . . . with . . . information') is now part of «l'aide raisonnable» (reasonable assistance).

As for the adjective «raisonnable» (reasonable), in spite of our reservations concerning "fuzzy notions", we have juxtaposed it to the word «nécessaire» (required) because one ought to deduce from the original text that the person in charge of the premises is obliged to give assistance as required by the inspector only to the degree that it is reasonable. The inspector may only require assistance if it is necessary and reasonable.

Rapport
annuel

37. Dans les trois mois suivant la fin de l'exercice, la commission soumet au ministre de l'Agriculture un rapport annuel des activités financières et des mesures prises en vertu de la présente loi.

Le ministre de l'Agriculture peut prescrire une forme particulière pour le rapport.

Annual
report

37. Within three months after the termination of each fiscal year, the Commission shall submit to the Minister of Agriculture an annual report of financial transactions and other actions taken under this Act.

The Minister may prescribe the form of the report.

Section 22 of the present Act has been divided into two sections.

In section 37 of the revised text, we state in one sentence the duty to submit a report, and in a second we grant the Minister the traditional power to prescribe its form.

The term «exercice» (fiscal year) has replaced the anglicism «année financière» (“fiscal year”), and «activités» (transactions), the anglicism «opérations» (“transactions”).

Dépôt du
rapport

38. Le ministre de l'Agriculture dépose le rapport au Parlement dans les quinze jours qui suivent sa réception.

S'il le reçoit alors que le Parlement ne siège pas, il le dépose dans les quinze jours de séance qui suivent.

Laying
of report

38. The Minister of Agriculture lays the report before Parliament within fifteen days after receiving it.

If he receives it while Parliament is not sitting, he then lays the report within the first fifteen days of the next sitting.

The obligation imposed on the Minister, as well as the alternative available, are stated in a minimum number of words, grouped in two short sentences.

CHAPITRE CINQUIÈME

LE COMITÉ CONSULTATIF

Création
du comité

39. Le ministre de l'Agriculture crée un comité consultatif.

CHAPTER FIVE

ADVISORY COMMITTEE

Committee
established

39. The Minister of Agriculture shall establish an Advisory Committee.

One idea per section: once again, this principle guided the present draft. Sections 5 and 6 of the present Act now become sections 39 to 44 of the revised text.

Naturally, the establishment of an advisory committee warrants a section on its own.

Fonction

40. À la demande de la commission, le comité conseille cette dernière en matière de production et de commercialisation des produits laitiers.

Duties

40. The Committee shall, when the Commission so requests, advise it upon matters relating to the production and marketing of dairy products.

The Act only mentions one committee, the «comité consultatif» (Advisory Committee). Thus, having given its full title in section 39 of the draft, we can now simply refer to the Committee, without more ado.

Subsection 6(1) of the present Act has been simplified by dividing it into sections 40 and 44 of the draft.

The ideas have been listed in decreasing order of importance — duties of the Committee, composition and tenure of the Committee, etc.

Composition
et mandat

41. Le ministre de l'Agriculture nomme les neuf membres du comité pour trois ans au plus. Toutefois, lors de la création du comité, trois membres sont nommés pour deux ans, trois pour trois ans et trois pour quatre ans.

Composition
and tenure

41. The Minister of Agriculture appoints the nine members of the Committee for a maximum of three years. However, upon the establishment of the Committee, three members are appointed for two years, three for three years and three for four years.

We have restricted the use of the ever-present passive voice. However, we have used it in the second sentence because the agent is mentioned in the preceding sentence. For further discussion on this matter, see the comments on the agent and the subject of the sentence in chapter IV.

Using two sentences, we have “cleaned up” the formulation, thus facilitating comprehension.

A logical connecting word, «toutefois» (however), has been introduced, the better to underline the different steps involved.

Président	42. Le ministre de l'Agriculture désigne un président parmi les membres.
-----------	---

President	42. The Minister of Agriculture designates a president from among the members.
-----------	---

One idea per section.

Rémunération et indemnités	43. Le gouverneur en conseil fixe la rémunération et les indemnités des membres.
-------------------------------	---

Remuneration and expenses	43. The Governor in Council fixes the remuneration and expenses of members.
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The word «indemnités» (expenses) is, as we have already noted, in current usage in the legal and fiscal fields, and thus appropriate here.

Réunions	44. Le comité se réunit à la demande de la commission.
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Meetings	44. The Committee meets at the request of the Commission.
----------	--

The use of the present tense does not allow the Committee to refuse to meet, therefore we have eliminated the word «doit» (“shall”).

CHAPITRE SIXIÈME

RÈGLEMENTATION

Règlements

45. Le gouverneur en conseil peut faire des règlements portant sur la commercialisation des produits laitiers. Les règlements peuvent être particuliers à un produit laitier, à une région, à un groupe ou à une catégorie de personnes.

Les règlements visent la réalisation des objets de la commission et l'application de la loi. Ils portent notamment sur

a) le contingentement à la commercialisation d'un produit laitier,

b) la saisie et la disposition d'un produit laitier commercialisé en violation d'un règlement établi en vertu du présent article,

c) le classement des personnes qui produisent un produit laitier en vue de sa commercialisation, ainsi que des personnes qui traitent un produit laitier en vue de sa commercialisation,

d) la désignation des organismes seuls autorisés à commercialiser un produit laitier visé aux règlements,

e) l'obligation de détenir un permis pour commercialiser un produit laitier,

f) la délivrance, l'annulation ou la suspension de permis, soit de production, soit de traitement d'un produit laitier visé aux règlements,

g) l'imposition et la perception par la commission de droits attachés à la délivrance des permis de production et de traitement d'un produit laitier visé aux règlements,

h) l'imposition et la perception par la commission de taxes attachées à la production ou au traitement d'un produit laitier visé aux règlements, selon le classement des personnes établi par règlement, en vertu du présent article,

i) les formalités nécessaires à l'admissibilité des producteurs de lait de vache ou de crème de ce lait à l'aide financière que la commission peut fournir dans le but d'en stabiliser les prix,

j) la désignation et le contenu des livres et des registres que tiennent les personnes qui produisent ou traitent un produit laitier visé aux règlements.

CHAPTER SIX

REGULATIONS

Regulations

45. The Governor in Council may make regulations for the marketing of dairy products. Regulations may be specific to any one dairy product, area, group or class of persons.

Regulations aim at carrying out the object of the Commission and the purposes of this Act. They relate, in particular, to

(a) marketing on a quota basis;

(b) seizure and disposal of a dairy product marketed in contravention of any regulation made under this section;

(c) classification of persons who produce any dairy product for market as well as persons who process any dairy product for market;

(d) designation of agencies through which a dairy product that comes under the regulations shall be marketed;

(e) requirement of licence for the marketing of any dairy product;

(f) issuance, cancellation or suspension of licences for either the production or processing of a dairy product that comes under the regulations;

(g) imposition and collection by the Commission of fees for issuing licences for the production or processing of a product that comes under the regulations;

(h) imposition and collection by the Commission of charges for the production or processing of a product that comes under the regulations according to the classification of persons as established by regulation under this section;

(i) rules governing the eligibility of producers of milk from cows and cream from such milk for financial aid that the Commission may provide for the purpose of stabilizing prices; and

(j) types and content of books and records that shall be kept by persons who produce or process a dairy product that comes under the regulations.

This section, which consists of a long enumeration, is, at first, difficult to state with the appropriate nuances. Enumeration is indeed a cumbersome art; however, it is acceptable on the condition that the information contained is condensed and precise. But, in this case, all the precise details in subsection 12(1) of the present Act, already compro-

mised by the word «notamment» (“including”), become suddenly useless when upon reading paragraph (h) one discovers that any kind of regulation can be made so long as it is “for carrying out the purposes and provisions of this Act” . . . For example, in paragraph 12(1)(d) of the present Act, what is the value of the restriction «à moins d’y être autorisées par permis» (“except under the authority of a licence”), if moreover another regulation passed pursuant to paragraph 12(1)(h) restricted the marketing of products alluded to in (d), even for the licence holder? As far as the reliability of the norm is concerned, that is tantamount to saying: Here is what the Governor in Council should do, unless he decides otherwise.

This is why, because of the great importance of paragraph 12(1)(h), the revised section begins by stating this principle. The limits of the regulatory powers of the Governor in Council are thus staked out. There follow, introduced by a «notamment» (in particular), ten hypothetical types of regulations that we qualify as pedagogical. In pure logic, the first sentence of section 45 of the draft should suffice to empower the Governor in Council to act. Since we have chosen the pedagogical approach, let us examine the distinctive feature of the paragraphs.

They are freed of verbal constraints: we have adapted the heading of the section, so as to allow the use of nouns such as: «désignation» (designation), «délivrance» (issuance), «imposition» (imposition), etc.

It should be noted that, to make the sentence affirmative, the «interdiction» (“prohibition”) of 12(1)(d) becomes an «obligation» (requirement) in paragraph 45(e).

We have eliminated the following information because it did not serve a useful purpose: «de quelque catégorie, variété ou qualité que ce soit, en totalité ou en partie» (“any class, variety or grade thereof, in whole or in part”). These provisions do not add to the already general nature of the expression «produit laitier» (dairy product), which, when used without restriction, already signifies any kind of dairy product, of any class, variety, etc.

Several paragraphs have been divided up.

The increase in the number of paragraphs as well as the separation of ideas allows for more rapid and surer research and referencing.

Subsection 12(2) of the present Act has been incorporated into the first part of section 45 of the draft.

We entrust to the reader the final evaluation of the import of the two versions in assessing and comparing their respective elements.

Produits
laitiers sur
la liste de
marchandises
d'importation
contrôlée

46. Le gouverneur en conseil peut ajouter à la liste de marchandises d'importation contrôlée, établie aux termes de la *Loi sur les licences d'exportation et d'importation*, un produit laitier dont il convient de contrôler l'importation pour permettre l'application des mesures de soutien des prix.

Dairy products
on the Import
Control List

46. The Governor in Council may add to the Import Control List established under the *Export and Import Permits Act* any dairy product for which he deems it is necessary to control importation in order to allow the implementation of measures of price support.

We have simplified the section, but the two versions still have the same scope. The reader can retrace the steps taken to get from the old to the new version by way of simple deduction. The nuance «pour soutenir . . . ou qui a pour effet d'en soutenir . . .» ('to support . . . or that has the effect of supporting') appearing in section 17 of the present Act would not be justified except in the case where one wanted to reinforce the unpremeditated effect of a measure taken pursuant to this Act on price supports. Even if this hypothesis did arise and the unpremeditated effect of the measure on prices was discovered, it could be classified among the price support measures.

CHAPITRE SEPTIÈME

INFRACTIONS ET PEINES

Infractions
et peines

47. Une personne qui viole une disposition de la présente loi ou d'un règlement établi sous son régime ou dont l'agent ou l'employé viole une telle disposition, commet une infraction et encourt

a) sur déclaration sommaire de culpabilité, une amende maximale de cinq cents dollars, un emprisonnement maximal de six mois ou les deux à la fois,

b) sur déclaration de culpabilité sur un acte d'accusation, une amende maximale de deux mille dollars, un emprisonnement maximal d'un an ou les deux à la fois.

CHAPTER SEVEN

OFFENCES AND PENALTIES

Offences and penalties

47. Every person who contravenes a provision of this Act or its regulations, or whose agent or employee contravenes such a provision, commits an offence and is liable

(a) on summary conviction to a maximum fine of five hundred dollars or to imprisonment for a maximum term of six months, or to both; and

(b) on conviction upon indictment to a maximum fine of two thousand dollars or imprisonment for a maximum of one year, or both.

The indefinite adjective «toute» (“every”) has been replaced by the indefinite article «une» (for the English, every).

The words «ou a omis de s’y conformer» (“or fails to comply with any . . .”) from subsection 21(1) of the present Act have been eliminated, for failure to comply is already an offence.

The active voice is more direct as a result of replacing the expression «est coupable d(e)» (“is guilty of”) with the verb «commettre» (commit). This relegates the question of guilt to another plane.

The words «à la fois l'amende et l'emprisonnement» ('to a fine . . . or to imprisonment . . . or to both') are replaced by the words «ou les deux à la fois» (or both).

English-style punctuation has disappeared.

Entrave à
un inspecteur

48. L'entrave à l'action d'un inspecteur dans l'exercice de ses fonctions constitue une infraction.

Obstruction
of inspector

48. It is an offence to obstruct an inspector in the carrying out of his duties.

Because we did not see any reason why the distinction between «l'entrave» ('obstruct') and «la gêne» ('hinder') should be maintained, we have kept only one term.

We have switched from the actor «nul» ('no person'), to the action, «l'entrave» (obstruction). This is the result of the difference in perspective between English, which focusses on the actor, and French, which ordinarily prefers to modify the action. In either case, one reaches the author of the offence.

«Dans l'exercice des fonctions» ('in the carrying out of his duties') is an expression which is sufficiently precise. It is not necessary to specify which duty it relates to. The context indicates it clearly enough.

Déclaration
trompeuse

49. Une déclaration fausse ou trompeuse faite à un inspecteur dans l'exercice de ses fonctions constitue une infraction.

False or
misleading
statements

49. It is an offence to make false or misleading statements to an inspector engaged in the carrying out of his duties.

The same general remarks as for section 48.

The drafter seems to have wanted to tie up all the loose ends, to foresee all possible situations, all possible statements. This is without doubt why he thought it wise to specify «verbalement ou par écrit» (“verbally or in writing”). In our view this appears dangerous. In general, that which is superfluous compromises the meaning of a normative text. The more one specifies, the more one restrains. Furthermore, can one be sure that, with progress, there will not be in the future certain forms of statement that will be neither verbal nor written? When in doubt, and in order to cover all eventualities, it is better not to explain the word «déclaration» (“statement”) which, used without a qualifier, alludes to both existing forms of statement and those yet to come.

Preuve
suffisante

50. Dans une poursuite pour infraction, le fait d'établir que l'infraction a été commise par un agent ou un employé de l'accusé, que celui-ci soit identifié ou non, constitue une preuve suffisante de l'infraction.

Sufficient
evidence

50. In a prosecution for an offence it is sufficient proof of the offence to establish that it was committed by an agent or employee of the accused, whether or not the person be identified.

This section takes up one of the two ideas contained in subsection 21(2) of the present Act. The other idea is covered in section 51.

Défense
admissible

51. La personne dont l'agent ou l'employé a commis une infraction peut, pour sa défense, démontrer qu'elle avait fait diligence pour prévenir l'infraction.

Admissible
defence

51. A person whose agent or employee committed an offence may for his defence establish that he exercised due diligence to prevent its commission.

Whereas the English version of a statute and, following it, the French translation, generally prefers to present the events as they unfold, as in a movie, and as is the case in the present Act, we have chosen to proceed by setting out the principle:

[Une] personne . . . peut . . . démontrer . . .

A person . . . may . . . establish . . .

III

The Penal Statute

1.

Introduction and Plan

As in the preceding chapter, we now present the main reasons that led to the selection of the second statute. Our work was greatly simplified thanks to the attention given by the Law Reform Commission of Canada to penal statutes. Moreover, it is at the suggestion of the Commission that we undertook with regard to An Act to provide for the control of narcotic drugs, an analysis identical to that carried out in respect of An Act to provide for the establishment of a dairy commission for Canada.

We have observed, and this is the second reason for our choice, that certain formal traits are common to both penal statutes and statutes of an administrative nature. These are: division by sections, French stylistics and English interferences, vocabulary and punctuation.

However, the substance of the *Narcotic Control Act* differs fundamentally from that of the preceding statute. This fact, the third reason for our choice, does not nevertheless come as a surprise to the legal practitioner who knows at the outset that the texts of civil statutes and penal statutes are distinguishable from one another not only by their substance, but also by their structure and composition. Whereas

the purpose of a statute of an administrative nature is to regulate an economic activity, that of a statute of a penal nature aims at repressing behaviour deemed reprehensible. In both cases, the legislator has recourse to coercive measures to ensure the enforcement of the law: in a statute of a penal nature these measures play a primary part; in a statute of an administrative nature they are only subsidiary.

Finally, because the original text of the *Narcotic Control Act* dates back to the beginning of the century, the drafting problems, as much from the point of view of style as of vocabulary, were also going to be different. Hence our choice.

The substance of a statute, we have said, conditions its structure. That of the *Narcotic Control Act* includes the following elements:

1. the prohibitions: to prohibit possession of a narcotic, traffic in narcotics, possession of a narcotic for purpose of trafficking, importing, exporting and cultivating a product known as a narcotic;
2. the ensuing offences and penalties;
3. the rules and regulations essential to the application of the Act;
4. the procedure to be followed: evidence, prosecution, cross-examination, warrant, forfeiture, restoration; and
5. the additional measures: detention (preventive or for observation, examination or treatment), limitation, appeal, other statutes, agreement with provinces.

Based on this analysis, we laid out the plan of the revised text of the *Narcotic Control Act* which is presented at the end of this introduction.

Our presentation follows the model adopted in the preceding chapter. Thus, we first present the revised statutory text in French, preceded by a table of contents and followed by an index, and the English version of the revised statute, also supplemented by a table of contents. Then comes the text of the present Act in both French and English, as well as a table of concordance. Finally, we present again the sections of the revised text in both French and English, this time with explanatory notes.

NARCOTICS ACT
PLAN

Sections	Interpretation	Repressive Measures		Administrative Measures		Schedule	
		General Provisions	Offences, Penalties	Delegated Legislation	Execution of the Statute		Detention
<i>Heading</i>	Chapter I <i>INTERPRETATION</i> <ul style="list-style-type: none">• Definitions	Chapter II <i>OBJECT OF THE ACT</i> <ul style="list-style-type: none">• Object Chapter III <i>OFFENCES AND PENALTIES</i> <ul style="list-style-type: none">• Offences		Chapter IV <i>REGULATIONS</i> <ul style="list-style-type: none">• Regulations• Appointment of analyst• Amendment to schedule		Chapter V <i>PROCEDURE</i> <ul style="list-style-type: none">• Judicial procedure• Search and seizure• Regulations of restoration and forfeiture	Chapter VI <i>DETENTION</i> <ul style="list-style-type: none">• Detention• Appeal• Application of other statutes
<i>Heading</i>	1						
<i>Heading</i>	2						
<i>Heading</i>	3-7						
<i>Heading</i>	8-9	Chapter V <i>PROCEDURE</i> <ul style="list-style-type: none">• Judicial procedure• Search and seizure• Regulations of restoration and forfeiture		Chapter VI <i>DETENTION</i> <ul style="list-style-type: none">• Detention• Appeal• Application of other statutes			
	10						
	11						
<i>Heading</i>							
	12-15	Chapter V <i>PROCEDURE</i> <ul style="list-style-type: none">• Judicial procedure• Search and seizure• Regulations of restoration and forfeiture		Chapter VI <i>DETENTION</i> <ul style="list-style-type: none">• Detention• Appeal• Application of other statutes			
	16-22						
	23-41						
<i>Heading</i>							
	42-47	Chapter V <i>PROCEDURE</i> <ul style="list-style-type: none">• Judicial procedure• Search and seizure• Regulations of restoration and forfeiture		Chapter VI <i>DETENTION</i> <ul style="list-style-type: none">• Detention• Appeal• Application of other statutes			
	48-49						
	50-53						
<i>Schedule</i>							

2.

Revised Text of the
Narcotic Control Act

LOI SUR LES STUPÉFIANTS

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CHAPITRE PREMIER

INTERPRÉTATION

Définitions

«faire le
trafic»

“*traffic or
trafficking*”

«personne qui
s’adonne aux
stupéfiants»
“*narcotic
addict*”

«possession»
“*possession*”

«stupéfiant»
“*narcotic*”

1. Dans la présente loi, on entend par

«faire le trafic»

le fait de fabriquer, vendre, donner, administrer, transporter, expédier, livrer ou distribuer un stupéfiant, ou encore d’offrir de le faire,

«personne qui s’adonne aux stupéfiants»
une personne qui, par suite de l’usage de stupéfiants, connaît un assujettissement psychologique ou physique à un stupéfiant,

«possession»

la possession au sens du *Code criminel*,

«stupéfiant»

une substance mentionnée à l’annexe ou un produit qui contient de cette substance.

CHAPITRE DEUXIÈME

OBJET DE LA LOI

Objet

2. La présente loi a pour objet, d’une part, l’interdiction de la possession, du trafic, de la possession en vue de faire le trafic, de l’importation, de l’exportation et de la culture d’un stupéfiant et, d’autre part, l’autorisation de certaines exceptions à cette interdiction.

CHAPITRE TROISIÈME

INFRACTIONS ET PEINES

Possession
d'un
stupéfiant

3. La possession d'un stupéfiant, sauf exception prévue par la présente loi ou par les règlements, est une infraction qui expose son auteur à une condamnation sur poursuite, sur déclaration sommaire de culpabilité ou sur déclaration de culpabilité sur un acte d'accusation.

Dans le premier cas, s'il s'agit d'une première infraction, l'auteur s'expose à une amende de mille dollars, à un emprisonnement de six mois, ou aux deux à la fois. En cas de récidive, il s'expose à une amende de deux mille dollars, à un emprisonnement d'un an ou aux deux à la fois.

Dans le second cas, l'auteur s'expose à un emprisonnement de sept ans.

Trafic d'un
stupéfiant

4. Le trafic d'un stupéfiant, sauf exception prévue par la présente loi ou par les règlements, est un acte criminel qui expose son auteur à l'emprisonnement à perpétuité.

Est assimilée à un stupéfiant aux fins du présent article, toute substance que le trafiquant prétend ou estime être tel.

Possession
en vue du trafic
d'un stupéfiant

5. La possession d'un stupéfiant en vue d'en faire le trafic, sauf exception prévue par la présente loi ou par les règlements, est un acte criminel qui expose son auteur à l'emprisonnement à perpétuité.

Importation
ou
exportation
d'un
stupéfiant

6. L'importation ou l'exportation d'un stupéfiant, sauf exception prévue par la présente loi ou par les règlements, est un acte criminel qui expose son auteur à l'emprisonnement à perpétuité ou, à tout le moins, à un emprisonnement de sept ans.

Culture
du pavot
sommifère ou
du chanvre
indien

7. La culture du pavot somnifère (*papaver somniferum* L.) ou du chanvre indien (*cannabis sativa* L.), sauf en conformité d'un permis délivré en vertu des règlements, est un acte criminel qui expose son auteur à un emprisonnement de sept ans.

Le ministre de la Santé et du Bien-être social peut ordonner la destruction des plantes de pavot somnifère (*papaver somniferum* L.) ou de chanvre indien (*cannabis sativa* L.) cultivées sans permis ou en violation d'un permis.

CHAPITRE QUATRIÈME

RÉGLEMENTATION

Règlements
d'application
de la loi

8. Le gouverneur en conseil peut, par règlement, prendre les mesures permettant la réalisation de l'objet de la présente loi et l'application de ses dispositions. Il peut notamment

a) pourvoir à la délivrance, à la suspension et à l'annulation de permis d'importation, d'exportation, de vente, de production ou de distribution d'un stupéfiant et, dans le cas du chanvre indien (*cannabis sativa* L.) ou du pavot somnifère (*papaver somniferum* L.), d'un permis de culture,

b) prescrire la forme, la durée et les modalités de ces permis, notamment les droits exigibles,

c) autoriser des personnes à posséder et à faire le commerce d'un stupéfiant et en prescrire les conditions,

d) autoriser la communication des renseignements, obtenus en vertu de la présente loi ou des règlements, aux autorités provinciales chargées de délivrer les permis visés au présent article.

Réglementation
des infractions
aux règlements

9. Le gouverneur en conseil peut, par règlement, prescrire une amende maximale de cinq cents dollars, un emprisonnement maximal de six mois, ou les deux à la fois, pour infraction aux règlements.

Cette sanction est prise sur déclaration sommaire de culpabilité.

Nomination
d'un analyste

10. Le gouverneur en conseil peut nommer un analyste aux fins de la présente loi.

Un analyste nommé en vertu de la *Loi des aliments et drogues* est un analyste aux fins de la présente loi.

Modification
à l'annexe

11. Le gouverneur en conseil peut, s'il l'estime nécessaire dans l'intérêt public, modifier l'annexe.

CHAPITRE CINQUIÈME

PROCÉDURE

Procédure judiciaire

Fardeau
de la preuve

12. Dans une poursuite sous le régime de la présente loi, ou des articles 421, 422 ou 423 du *Code criminel*, pour autant qu'ils s'appliquent à une infraction à la présente loi, il incombe à l'accusé de prouver qu'une exception, exemption, excuse ou réserve prévue par la loi joue en sa faveur.

Le ministère public n'est pas tenu, sauf à titre de réfutation, de prouver que l'exception, l'exemption, l'excuse ou la réserve en question ne joue pas en faveur de l'accusé.

Poursuite
pour
possession en
vue du trafic

13. Si dans une poursuite pour possession d'un stupéfiant en vue d'en faire le trafic, l'accusé plaide non coupable, l'instruction du procès se déroule comme s'il s'agissait d'une poursuite pour possession d'un stupéfiant.

La cour détermine si l'accusé était en possession d'un stupéfiant, après l'exposition de la preuve du ministère public et après que l'accusé ait eu l'occasion de présenter sa réplique et sa défense. Dans la négative, la cour acquitte l'accusé.

Dans l'affirmative, la cour fournit à l'accusé l'occasion de démontrer que son intention n'était pas de faire le trafic d'un stupéfiant et au ministère public l'occasion de faire la preuve contraire. Si l'accusé démontre qu'il n'avait pas l'intention de faire le trafic d'un stupéfiant, il est acquitté de cette accusation et est déclaré coupable de possession d'un stupéfiant.

Certificat de
l'analyste:
preuve
recevable

14. Le certificat d'un analyste attestant qu'il a analysé ou examiné une substance et énonçant le résultat de l'analyse ou de l'examen, est une preuve recevable dans une poursuite pour infraction à la présente loi ou aux articles 421, 422 et 423 du *Code criminel*.

En l'absence de preuve contraire, ce certificat constitue une preuve des déclarations qu'il contient, sans qu'il soit nécessaire d'établir la qualité d'analyste du signataire ni l'authenticité de sa signature.

Pour que le certificat soit recevable, la partie qui désire le produire avertit de son intention la partie adverse et lui communique copie du certificat, le tout suffisamment tôt avant le procès.

Contre-
interrogatoire
de l'analyste

15. La partie contre laquelle le certificat d'analyse est produit peut, avec la permission de la cour, exiger la présence de l'analyste qui en est l'auteur aux fins de contre-interrogatoire.

Perquisitions et saisies

Perquisition
sans mandat

16. Un agent de la paix, s'il a raison de croire à la présence d'un stupéfiant relié à une infraction à la présente loi, peut perquisitionner sans mandat, sauf dans une maison d'habitation.

Perquisition
avec mandat

17. Pour perquisitionner dans une maison d'habitation, il faut, d'une part, que l'agent de la paix ait raison de croire à la présence d'un stupéfiant relié à une infraction à la présente loi, et, d'autre part, qu'il détienne un mandat de main-forte ou un mandat de perquisition délivré à cet effet, en vertu du présent article.

Mandat de
perquisition

18. Un juge de paix convaincu, à la suite d'une déclaration sous serment, qu'il y a raison de croire à la présence, dans une maison d'habitation, d'un stupéfiant relié à une infraction à la présente loi, délivre un mandat de perquisition afin d'y chercher le stupéfiant.

Ce mandat est revêtu de la signature du juge de paix et nomme l'agent de la paix qu'il habilite.

Mandat de
main-forte

19. Un juge de la Cour fédérale du Canada délivre, à la demande du ministre de la Santé et du Bien-être social, un mandat de main-forte pour perquisitionner à toute heure dans une maison d'habitation afin d'y chercher un stupéfiant.

Le mandat nomme la personne habilitée.

Assistance
nécessaire

20. La personne habilitée par le mandat de main-forte peut réquisitionner les services d'une autre personne pour la perquisition.

Fouille
et saisie

21. L'agent de la paix peut, dans le lieu qu'il perquisitionne, saisir, d'une part, un stupéfiant ou un objet qui, selon ses soupçons, contient ou cache un stupéfiant et, d'autre part, un objet qui, d'après ce qu'il a raison de croire, est relié à une infraction à la présente loi, ou peut servir à prouver une infraction à la présente loi.

La perquisition du lieu inclut la fouille d'une personne qui s'y trouve.

Usage de
la force

22. Dans l'exercice de ses pouvoirs de perquisition, un agent de la paix peut, avec l'assistance qu'il estime nécessaire, forcer le lieu perquisitionné et démonter ou défoncer ce qui s'y trouve.

Restitution de l'objet saisi

Demande de
restitution

23. L'objet saisi peut être réclamé au moyen d'une demande de restitution auprès d'un magistrat compétent dans le territoire où la saisie a eu lieu.

Demande
recevable

24. La demande de restitution est recevable si, d'une part, l'objet saisi n'est pas frappé d'une ordonnance de confiscation et si, d'autre part, le demandeur la présente dans les deux mois de la saisie, en avise le ministère public au préalable de la manière prescrite par les règlements, et établit son droit à la possession de l'objet saisi.

Ordonnance
de restitution
immédiate

25. Le magistrat ordonne la restitution immédiate de l'objet saisi au demandeur, s'il est convaincu, après audition de la demande, que le demandeur a droit à la possession de l'objet saisi et que celui-ci n'est pas susceptible de servir de preuve dans une poursuite reliée à une infraction à la présente loi.

L'objet saisi qui est frappé d'une ordonnance de confiscation en vertu de la présente loi ne peut faire l'objet d'une ordonnance de restitution immédiate.

Ordonnance
de restitution
différée

26. Le magistrat, s'il est convaincu que le demandeur a droit à la possession de l'objet saisi, mais estime que l'objet est susceptible de servir de preuve dans une éventuelle poursuite reliée à une infraction à la présente loi, ordonne de différer la restitution jusqu'à ce qu'on ait statué sur cette poursuite ou, en l'absence de poursuite, jusqu'à la fin du quatrième mois suivant la saisie.

Disposition
en l'absence
de réclamation
ou d'ordonnance

27. L'objet saisi, non réclamé dans les deux mois de sa saisie, est remis au ministre de la Santé et du Bien-être social qui peut en disposer.

Confiscation de l'objet saisi

Confiscation
en cas de
culpabilité

28. Une ordonnance de confiscation frappe l'objet saisi, relié à une infraction de possession, de trafic, de possession en vue de faire le trafic, d'importation ou d'exportation d'un stupéfiant dont l'auteur a été reconnu coupable.

Une somme d'argent qui a été saisie peut également faire l'objet d'une ordonnance de confiscation, si elle est reliée à l'infraction.

Confiscation
d'un moyen
de transport

29. Un moyen de transport saisi, relié à une infraction de possession, de trafic, de possession en vue de faire le trafic, d'importation ou d'exportation d'un stupéfiant dont l'auteur a été reconnu coupable ne peut faire l'objet d'une ordonnance de confiscation sauf si le ministère public en fait la demande.

Au profit de
Sa Majesté

30. La confiscation se fait au profit de Sa Majesté.

Disposition

31. La disposition d'un objet confisqué incombe au ministre de la Santé et du Bien-être social qui, dans le cas d'un moyen de transport, attend trente jours à compter de la confiscation avant d'en prescrire la disposition.

Demande
d'ordonnance
déclaratoire
d'un droit

32. Une personne qui revendique un droit sur le moyen de transport confisqué, à titre de propriétaire, créancier hypothécaire, détenteur de privilège ou d'un autre droit du même genre, peut, dans les trente jours qui suivent la confiscation, demander par écrit à un juge de rendre une ordonnance déclaratoire de son droit sur le moyen de transport confisqué.

Cette revendication n'est cependant pas ouverte à l'auteur de l'infraction qui a entraîné la confiscation, ni à la personne qui était en possession du moyen de transport lors de la saisie.

Juge
compétent

33. Le juge compétent à émettre une ordonnance déclaratoire d'un droit sur un moyen de transport confisqué est

a) dans la province de Québec, un juge de la Cour supérieure du district où le moyen de transport a été saisi,

b) dans les provinces de Terre-Neuve et de l'Île-du-Prince-Édouard, un juge de la Cour suprême de ces provinces,

c) dans le territoire du Yukon et dans les territoires du Nord-Ouest, un juge de la Cour suprême de ce ou ces territoires,

d) dans les autres provinces, un juge d'une cour de comté ou de district ayant compétence dans le comté ou le district où le moyen de transport a été saisi.

Audition

34. Le juge, saisi de la demande d'ordonnance déclaratoire d'un droit sur un moyen de transport confisqué, n'entend cette demande qu'après l'expiration d'un délai de trente jours à compter du dépôt de la demande.

Conditions
requis pour
l'ordonnance
déclaratoire

35. Le juge émet l'ordonnance déclaratoire lorsqu'il est convaincu, à la suite de l'audition, que le demandeur n'est, d'une part, coupable ni de complicité, ni de collusion dans l'infraction reliée à la confiscation et, d'autre part, qu'il a fait ce qui était raisonnablement possible pour que le moyen de transport saisi et confisqué ne serve pas directement ou indirectement à la perpétration d'un acte illégal.

Contenu de
l'ordonnance
déclaratoire

36. L'ordonnance déclaratoire précise la nature et l'étendue du droit du demandeur et le déclare intact.

Ordonnance
définitive
en l'absence
d'appel

37. L'ordonnance déclaratoire est définitive, sauf appel dans le délai prescrit par la procédure des appels.

Appel

38. Le demandeur ou le ministre de la Santé et du Bien-être social peut interjeter appel auprès de la cour d'appel, de la décision du juge sur la demande d'ordonnance déclaratoire.

Cour d'appel
compétente

39. L'appel de la décision du juge sur la demande d'ordonnance déclaratoire est du ressort de la cour d'appel de la province où la décision du juge a été rendue.

Cour d'appel s'entend ici selon la définition de «cour d'appel» à l'article 2 du *Code criminel*.

Procédure
d'appel

40. L'appel de la décision du juge sur la demande d'ordonnance déclaratoire suit la même procédure que les appels d'ordonnances ou de jugements que connaît la cour d'appel.

Restitution
du moyen
de transport

41. Le ministre de la Santé et du Bien-être social ordonne, à la demande d'une personne qui a obtenu une ordonnance définitive établissant son droit sur le moyen de transport confisqué, sa restitution ou le versement d'une indemnité équivalant au droit de la personne sur celui-ci.

CHAPITRE SIXIÈME

DÉTENTION

Trois types
de détention

42. Le présent chapitre prévoit la détention aux fins d'observation et d'examen, la détention préventive et la détention aux fins de traitement.

La détention aux fins d'observation et d'examen vise à déterminer si la personne qui en est l'objet s'adonne aux stupéfiants.

La détention préventive et la détention aux fins de traitement remplacent, sous certaines conditions, la sentence régulière prévue pour une infraction à la présente loi.

Détention
préventive

43. La cour impose une sentence de détention préventive pour une période indéterminée à une personne déclarée coupable soit de trafic d'un stupéfiant, soit de possession d'un stupéfiant en vue d'en faire le trafic ou d'importation ou d'exportation de stupéfiants, si cette personne a déjà été déclarée coupable de l'une de ces infractions, ou d'une infraction au paragraphe 4(3) du chapitre 201 des Statuts révisés du Canada de 1952, ou si elle a déjà fait l'objet d'une ordonnance de détention préventive en vertu du présent article.

Détention
aux fins
d'observation
et d'examen

44. La personne accusée de possession, de trafic, de possession en vue de faire le trafic, d'importation ou d'exportation d'un stupéfiant peut être envoyée en détention aux fins d'observation et d'examen, à sa demande ou à celle du ministère public.

Émission de
l'ordonnance

45. La cour ou le juge compétent qui acquiesce à la demande de détention aux fins d'observation et d'examen émet l'ordonnance. Celle-ci peut intervenir en n'importe quel temps avant le prononcé de la sentence.

Contenu de
l'ordonnance

46. L'ordonnance de détention aux fins d'observation et d'examen indique, par écrit, le lieu de la détention et sa durée, laquelle ne peut excéder sept jours.

Détention
aux fins de
traitement

47. Lorsqu'une personne envoyée en détention, aux fins d'observation et d'examen, est déclarée coupable de l'infraction à l'origine de son envoi en détention, la cour étudie, avant de prononcer la sentence, les témoignages et les dépositions résultant de l'observation et de l'examen, y compris la déposition d'au moins un médecin.

Si la cour est alors convaincue que la personne déclarée coupable est une personne qui s'adonne aux stupéfiants, elle la condamne à la détention aux fins de traitement pour une période indéterminée.

Appel

48. Une personne condamnée à la détention aux fins de traitement peut faire appel devant la cour d'appel sur toute question de droit ou de fait.

Application du
Code criminel

49. Les dispositions de l'article 695 du *Code criminel* relatives aux appels d'une sentence de détention préventive s'appliquent, compte tenu des adaptations nécessaires, à l'appel ouvert à la personne condamnée à la détention aux fins de traitement.

Application de
la *Loi sur les
pénitenciers*
et de la *Loi sur
la libération
conditionnelle
de détenus*

50. Une personne condamnée à la détention préventive ou à la détention aux fins de traitement est détenue dans une institution régie en vertu de la *Loi sur les pénitenciers*.

Cette personne est sous le régime de la *Loi sur la libération conditionnelle de détenus*. Pour l'application de cette loi, elle est réputée, pendant son incarcération, être un détenu et, dès sa libération aux termes d'un certificat de la Commission des libérations conditionnelles, être un détenu à liberté conditionnelle.

Limitation

51. Le certificat de libération conditionnelle a pour effet de limiter la période indéterminée de la détention aux fins de traitement, à une durée maximale de dix ans à compter de la date de la libération. Toutefois, la révocation ou la déchéance de la libération fait perdre au détenu à liberté conditionnelle le bénéfice de cette limitation.

Est inadmissible à ce bénéfice une personne qui, lors de la déclaration de culpabilité qui a entraîné sa détention, avait déjà été déclarée coupable d'une infraction à la présente loi ou au chapitre 201 des Statuts revisés du Canada de 1952.

Loi
provinciale

52. Une personne qui s'adonne aux stupéfiants et qui est détenue aux fins de traitement sous le régime d'une loi provinciale est réputée, pour les objets de la *Loi sur les pénitenciers* et de la *Loi sur la libération conditionnelle de détenus*, avoir été envoyée en détention aux fins de traitement en vertu de la présente loi.

53. Le ministre de la Justice peut, sous réserve de l'approbation du gouverneur en conseil, conclure un accord avec une province dont la législature a édicté une loi prévoyant la détention aux fins de traitement d'une personne qui s'adonne aux stupéfiants sans toutefois être accusée de possession d'un stupéfiant.

L'accord porte sur l'incarcération et le traitement de cette personne dans une institution régie en vertu de la *Loi sur les pénitenciers* et, également, sur sa libération et sa surveillance en conformité de la *Loi sur la libération conditionnelle de détenus*.

LOI SUR LES STUPÉFIANTS

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Translator's note: This index, based on the French version of the revised text, comprises keywords or expressions listed alphabetically and referred to in terms of the numbers of the sections of the Act in which they appear. An index of the English version of an Act could adopt the same model.

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NARCOTICS ACT

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CHAPTER ONE

INTERPRETATION

Definitions

"narcotic"
«*stupéfiant*»

"narcotic addict"
«*personne qui
s'adonne aux
stupéfiants*»

"possession"
«*possession*»

**"traffic or
trafficking"**
«*faire le
trafic*»

1. In this Act,

(a) "narcotic" means any substance included in the schedule or anything that contains that substance;

(b) "narcotic addict" means a person who has developed a psychological or physical dependence on a narcotic;

(c) "possession" means possession as defined in the *Criminal Code*;

(d) "traffic or trafficking" means manufacturing, selling, giving, administering, transporting, sending, delivering, distributing a narcotic or offering to do so.

CHAPTER TWO

OBJECT OF THE ACT

Object

2. The object of this Act is twofold: first, to prohibit possession of a narcotic, trafficking in narcotics, possession of a narcotic for purposes of trafficking, importing, exporting and cultivating a narcotic; and second, to provide for certain exceptions to such prohibition.

CHAPTER THREE

OFFENCES AND PENALTIES

Possession of a narcotic

3. No person shall possess a narcotic except as authorized by this Act or the regulations. The offender is liable to a penalty upon summary conviction or conviction on indictment.

If convicted summarily, the offender is liable to a fine of one thousand dollars or imprisonment for six months or both. For a subsequent offence, the offender is liable to a fine of two thousand dollars or imprisonment for one year or both.

If convicted on indictment, the offender is liable to imprisonment for seven years.

Trafficking
a narcotic

4. No person shall traffic in a narcotic except as authorized by this Act or the regulations. The offender is liable to imprisonment for life.

For the purposes of this section a narcotic includes any substance which the trafficker claims or believes to be a narcotic.

Possession
for purposes
of trafficking

5. No person shall possess a narcotic for the purposes of trafficking except as authorized by this Act or the regulations. The offender is liable to imprisonment for life.

Importing
or exporting
a narcotic

6. No person shall import or export a narcotic except as authorized by this Act or the regulations. The offender is liable to imprisonment for life or a minimum of seven years.

Cultivating
opium poppy
or marihuana

7. No person shall cultivate opium poppy (*Papaver somniferum* L.) or marihuana (*Cannabis sativa* L.) except in accordance with a licence issued under the regulations. The offender is liable to imprisonment for seven years.

The Minister of Health and Welfare may cause to be destroyed any plant of opium poppy (*Papaver somniferum* L.) or marihuana (*Cannabis sativa* L.) cultivated without a licence or in violation of the terms of a licence.

CHAPTER FOUR

REGULATIONS

Regulations

8. The Governor in Council may make regulations to carry out the object and provisions of this Act. He may, in particular,

(a) provide for the issuance, suspension or cancellation of licences for importing, exporting, selling, producing or distributing a narcotic as well as cultivating opium poppy (*Papaver somniferum* L.) or marihuana (*Cannabis sativa* L.);

(b) prescribe the form, duration, terms and conditions, including fees, of such licences;

(c) authorize persons to possess or sell a narcotic and prescribe conditions for such possession or sale; and

(d) authorize communication of any information obtained under this Act or the regulations to provincial authorities empowered to deliver licences under this section.

Penalties for breach of regulations

9. The Governor in Council may, by regulation, prescribe a maximum fine of five hundred dollars or a maximum imprisonment of six months or both for breach of any regulation.

This sentence shall be imposed upon summary conviction.

Appointment of analyst

10. The Governor in Council may appoint an analyst for the purposes of this Act.

A person appointed as an analyst under the *Food and Drugs Act* is an analyst for the purposes of this Act.

Amendment
to schedule

11. The Governor in Council may amend the schedule if he deems it necessary in the public interest.

CHAPTER FIVE

PROCEDURE

Judicial Procedure

Burden of
proof

12. In any prosecution under this Act or section 421, 422 or 423 of the *Criminal Code* as they apply to an offence under this Act, the accused has the burden of providing that an exception, exemption, excuse or qualification prescribed by law operates in his favour.

At no time in the proceedings is the prosecutor required, except by way of rebuttal, to prove that an exception, exemption, excuse or qualification does not operate in favour of the accused.

Prosecution
for
trafficking

13. When the accused pleads not guilty to an offence of possession of a narcotic for the purposes of trafficking, the trial proceeds as if the charge was for the offence of possession of a narcotic.

After the close of the case for the prosecution and after the accused has had an opportunity to present his rebuttal and defence, the court shall determine whether or not the accused was in possession of a narcotic. If the accused is found not to have been in possession, the court shall acquit him.

If the accused is found to have been in possession, the court shall first allow the accused an opportunity to establish that he was not in possession of the narcotic for the purposes of trafficking and second allow the prosecutor to establish the opposite. If it is found that the accused

did not intend to traffic in narcotics, the court shall acquit him of the charge of possession for the purposes of trafficking and shall find him guilty of the offence of possession of a narcotic.

Certificate
of analyst:
admissible
evidence

14. A certificate of an analyst stipulating that he has analysed or examined a substance and stating his findings is admissible evidence in any prosecution for an offence under this Act or under section 421, 422 or 423 of the *Criminal Code*.

In the absence of evidence to the contrary, the certificate is proof of the statements contained therein and no proof is needed regarding either the qualification or the signature of the analyst.

The party intending to use a certificate shall, for the certificate to be admissible, notify the other party of its intention and give him a copy of the certificate within reasonable time before the trial.

Cross-
examination
of analyst

15. The party against whom a certificate of an analyst is produced may, with leave of the court, require the attendance of the analyst who prepared the certificate for the purposes of cross-examination.

Search and Seizure

Search
without
warrant

16. A peace officer may, without a warrant, search any place, except a dwelling-house, in which he reasonably believes there is a narcotic related to an offence under this Act.

Warrant
to search
a dwelling-
house

17. To search a dwelling-house requires first, that the peace officer has reason to believe that there is in the dwelling-house a narcotic related to an

offence under this Act and second, that he possesses a writ of assistance or a search warrant issued for that purpose under this Act.

Search
warrant

18. A justice of the peace who is satisfied by information provided under oath that there are reasonable grounds for believing that in a dwelling-house there is a narcotic related to an offence under this Act, shall issue a search warrant authorizing to search therein for such narcotic.

The warrant shall be signed by the justice of the peace and shall designate the peace officer so authorized.

Writ of
assistance

19. A judge of the Federal Court of Canada shall, upon application by the Minister of Health and Welfare, issue a writ of assistance authorizing a person designated therein to search at any time a dwelling-house for narcotics.

The warrant shall designate the person so authorized.

Necessary
assistance

20. The person authorized to search by a writ of assistance may demand the aid of another person.

Search
and
seizure

21. The peace officer may, during the search of any place, seize, first, any narcotic or object which he suspects contains or hides a narcotic and, second, anything which he suspects is related to an offence under this Act or may provide evidence of an offence under this Act.

Authority to search a place includes authority to search any person found in such a place.

Use of
force

22. In exercising his authority to search, the peace officer may, with such assistance as he deems necessary, forcefully enter the place to be searched and take apart or break into anything therein.

Return of Seized Objects

Application
for
restoration

23. A person whose object has been seized may apply to a magistrate of the territorial jurisdiction where the seizure was made for an order of restoration.

Admissible
application

24. For an application of restoration to be admissible, first, the object seized shall not have been forfeited and, second, the applicant shall make his application within two months from the date of seizure, give prior notification to the Crown in the manner prescribed by the regulations, and establish that he is entitled to possession of the seized object.

Order of
immediate
restoration

25. The magistrate shall order the immediate restoration of the seized object to the applicant if he is satisfied that the applicant is entitled to its possession and that the seized object is not likely to be required as evidence in a prosecution of an offence under this Act.

The seized object that is forfeited pursuant to this Act may not be made the object of an order of immediate restoration.

Order of
delayed
restoration

26. Where the magistrate is satisfied that the applicant is entitled to the possession of the seized object but deems that the seized object is likely to be required as evidence in a prosecution of an offence under this Act, he shall or-

der that restoration be delayed until after judgment or until the expiration of four months after the date of seizure if no proceedings have been commenced.

Disposal
in absence
of application
or order

27. Where no application has been made for the restoration of the seized object within two months from the date of its seizure, it shall be delivered to the Minister of Health and Welfare who may then dispose of it.

Forfeiture of Seized Objects

Forfeiture
if guilty

28. Where the accused is convicted of an offence of possession of a narcotic, trafficking in narcotics, possession of a narcotic for the purposes of trafficking, or importing or exporting a narcotic, an order for forfeiture is made in respect of the seized object related to the offence.

Any money seized may also be forfeited if it is related to the offence.

Forfeiture
of conveyance

29. Where the accused is convicted of an offence of possession of a narcotic, trafficking in narcotics, possession of a narcotic for the purposes of trafficking, or importing or exporting a narcotic, only upon application by the Crown shall an order for forfeiture be made for a conveyance seized and related to the offence.

Forfeiture to
Her Majesty

30. An object is forfeited to Her Majesty.

Disposal

31. A forfeited object shall be disposed of by the Minister of Health and Welfare who, in the case of a conveyance, shall await the expiration of thirty days from the date of forfeiture before prescribing its disposal.

Application
for
declaratory
order of
interest

32. A person who claims an interest in a forfeited conveyance as owner, mortgagee, lienholder or any like interest may apply in writing to a judge, within thirty days from the date of the forfeiture, for a declaratory order of his interest in the forfeited conveyance.

This procedure is not open to the person who committed the offence which resulted in the forfeiture nor to the person who was in possession of the conveyance when seized.

Judge

33. The judge authorized to issue a declaratory order of an interest in a forfeited conveyance is:

(a) in the Province of Québec, a judge of the Superior Court of Québec for the district in which the conveyance was seized;

(b) in Newfoundland and Prince Edward Island, a judge from the Supreme Court;

(c) in the Yukon and Northwest Territories, a judge of the Supreme Court thereof; and

(d) in the other provinces, a judge of the county or district court where the conveyance was seized.

Hearing

34. The judge with whom an application for a declaratory order of an interest is filed in respect of a forfeited conveyance shall hear the application only after the expiration of a period of thirty days after the application has been filed.

Essential
conditions
for
declaratory
order

35. The judge shall issue the declaratory order if he is satisfied first, that the applicant is not guilty of complicity or collusion in respect of the offence related to the forfeiture and second, that the

applicant took reasonable steps for the seized and forfeited conveyance not to be used in respect of an unlawful act.

Contents
of declaratory
order

36. A declaratory order states the nature and extent of the applicant's interest and declares that his interest is not affected by the forfeiture.

Final order
in absence
of appeal

37. The declaratory order is final in the absence of an appeal within the time limit prescribed for appeal procedure.

Appeal

38. The applicant or the Minister of Health and Welfare may apply to the court of appeal from the judge's decision on an application for a declaratory order.

Court of
appeal

39. The court of appeal of the province where the judge's decision was made has jurisdiction to hear the appeal on the decision in respect of the application for a declaratory order.

In this section, "court of appeal" means the court of appeal as defined in section 2 of the *Criminal Code*.

Appeal
procedure

40. The appeal procedure from the judge's decision on an application for a declaratory order shall be the same as the procedure governing appeals to the court of appeal from orders or judgments.

Restitution
of conveyance

41. Where a person is granted a final order which states his interest in a forfeited conveyance, the Minister of Health and Welfare shall, on application from that person, order that the conveyance be returned to the person or that an amount equal to the value of the interest of the person be paid to him.

CHAPTER SIX

DETENTION

Three kinds
of detention

42. This chapter provides for preventive detention, detention for observation and examination, and detention for treatment.

Detention for observation and examination is used to establish whether or not the person subjected to such detention is a narcotic addict.

Preventive detention and detention for treatment are, under certain conditions, substitutes for the regular sentence applicable to an offence under this Act.

Preventive
detention

43. The court shall impose a sentence of preventive detention for an indeterminate period to a person convicted of trafficking in narcotics, of possession of a narcotic for purposes of trafficking or of importing or exporting a narcotic, if such person has been previously convicted of the same offence or of an offence under subsection 4(3), chapter 201 of the Revised Statutes of Canada, 1952, or has previously been sentenced to preventive detention under this section.

Detention
for
observation
and
examination

44. A person charged with possession of a narcotic, or of trafficking a narcotic, or of possession for purposes of trafficking, or of importing or exporting a narcotic may, upon application by the Crown or on his own application, be ordered detained for observation and examination.

Issuing
the order

45. The court or judge having jurisdiction who agrees with the application for detention for observation and examination shall issue the order at any time before sentencing.

Contents
of order

46. An order of detention for observation and examination shall indicate in writing the place of detention and its duration which shall not exceed seven days.

Detention
for
treatment

47. Where a person who has been detained for observation or examination is convicted of the offence for which he was first so detained, the court shall, before sentencing, consider the evidence arising out of the observation or examination, including the evidence of at least one medical practitioner.

Where the court is satisfied that the convicted person is a narcotic addict, the court shall sentence him to detention for treatment for an indeterminate period.

Appeal

48. A person sentenced to detention for treatment may apply to the court of appeal on any ground of law or fact.

Application
of *Criminal*
Code

49. The provisions of section 695 of the *Criminal Code* in respect of appeals against a sentence of preventive detention apply *mutatis mutandis* to an appeal to which a person sentenced to detention for treatment is entitled.

Application
of *Penitentiary*
Act and
Parole Act

50. A person sentenced to preventive detention or to detention for treatment shall be confined to an institution operated pursuant to the *Penitentiary Act*.

Such person is subject to the provisions of the *Parole Act*. For purposes of the application of that Act, the person is deemed to be an inmate during his confinement and to be a paroled inmate upon his release in accordance with a certificate of the National Parole Board.

Limitation

51. Where a person sentenced to detention for treatment is released in accordance with a certificate of the National Parole Board, the rest of his sentence is limited to a maximum of ten years. This limitation is however lost upon forfeiture or revocation of parole.

A person is not eligible for a limited sentence if he has been convicted of an offence under this Act or chapter 201 of the Revised Statutes of Canada, 1952 before the conviction which resulted in his detention.

Effect of
provincial
legislation

52. A narcotic addict confined to detention for treatment pursuant to a provincial Act shall be deemed, for the purposes of the *Penitentiary Act* and *Parole Act*, to have been sentenced to detention for treatment under this Act.

Agreement
with
provinces

53. Where a province enacts legislation designed to detain for treatment a person who, although not charged with possession of a narcotic, is a narcotic addict, the Minister of Justice may enter into an agreement with the province, subject to the approval of the Governor in Council, for the confinement and treatment of such person in an institution governed under the *Penitentiary Act*. This agreement may also provide for parole and supervision of such a person pursuant to the *Parole Act*.

3.

Present Act

CHAPITRE N-1

Loi prévoyant la réglementation des stupéfiants

TITRE ABRÉGÉ

Titre abrégé

1. La présente loi peut être citée sous le titre:
Loi sur les stupéfiants. 1960-61, c. 35, art. 1.

INTERPRÉTATION

Définitions

«analyste»
“analyst”

2. Dans la présente loi —

«analyste» désigne une personne nommée à ce poste en vertu de la *Loi des aliments et drogues* ou de la présente loi;

«chanvre indien» ou
«marihuana»
“marihuana”

«chanvre indien» ou «marihuana» désigne le *Cannabis sativa* L.;

«Ministre»
“Minister”

«Ministre» désigne

- a) à l'égard de la Partie I, le ministre de la Santé nationale et du Bien-être social, et
- b) à l'égard de la Partie II, le ministre de la Justice;

«moyen de transport»
“conveyance”

«moyen de transport» comprend tout aéronef, vaisseau, véhicule à moteur ou autre moyen de transport de quelque genre que ce soit;

«pavot somnifère»
“opium...”

«pavot somnifère» désigne le *Papaver somniferum* L.;

«personne adonnée aux stupéfiants»
“narcotic...”

«personne adonnée aux stupéfiants» désigne une personne qui, par suite de l'usage de stupéfiants,

- a) a fait naître un désir de prendre un stupéfiant, ou un besoin de continuer à en prendre, ou
- b) a développé un assujettissement psychologique ou physique à l'effet d'un stupéfiant;

«possession»
“possession”

«possession» désigne la possession au sens où la définit le *Code criminel*;

«stupéfiant»
“narcotic”

«stupéfiant» désigne toute substance mentionnée dans l'annexe, ou tout ce qui contient une telle substance;

«trafiquer» ou
«faire le trafic»
“traffic”

«trafiquer» ou «faire le trafic» désigne le fait

- a) de fabriquer, vendre, donner, administrer, transporter, expédier, livrer ou distribuer, ou

b) offrir de faire l'une ou l'autre des opérations mentionnées à l'alinéa a)
autrement que sous l'autorité de la présente loi ou des règlements. 1960-61, c. 35, art. 2.

PARTIE I

INFRACTIONS ET EXÉCUTION DE LA LOI

Infractions particulières

Possession de stupéfiant

3. (1) Sauf ainsi que l'autorisent la présente loi ou les règlements, nul ne peut avoir un stupéfiant en sa possession.

Infraction

(2) Quiconque enfreint le paragraphe (1) est coupable d'une infraction et passible,

a) sur déclaration sommaire de culpabilité, pour une première infraction, d'une amende de mille dollars ou d'un emprisonnement de six mois ou à la fois de l'amende et de l'emprisonnement, et pour infraction subséquente, d'une amende de deux mille dollars ou d'un emprisonnement d'un an ou à la fois de l'amende et de l'emprisonnement; ou

b) sur déclaration de culpabilité sur acte d'accusation, d'un emprisonnement de sept ans. 1960-61, c. 35, art. 3; 1968-69, c. 41, art. 12.

Trafic de stupéfiants

4. (1) Nul ne peut faire le trafic d'un stupéfiant ou d'une substance quelconque qu'il prétend être ou estime être un stupéfiant.

Possession en vue d'un trafic

(2) Nul ne peut avoir en sa possession un stupéfiant pour en faire le trafic.

Infraction

(3) Quiconque enfreint le paragraphe (1) ou (2) est coupable d'un acte criminel et encourt l'emprisonnement à perpétuité. 1960-61, c. 35, art. 4.

Importation et exportation

5. (1) Sauf ainsi que l'autorisent la présente loi ou les règlements, nul ne peut importer au Canada ni exporter hors de ce pays un stupéfiant quelconque.

Infraction

(2) Quiconque enfreint le paragraphe (1) est coupable d'un acte criminel et peut être con-

damné à l'emprisonnement à perpétuité, mais encourt un emprisonnement d'au moins sept ans. 1960-61, c. 35, art. 5.

Culture du
pavot somnifère
ou du chanvre
indien

6. (1) Nul ne peut cultiver le pavot somnifère ou le chanvre indien sauf avec l'autorisation et en conformité d'un permis à lui délivré aux termes des règlements.

Infraction

(2) Quiconque enfreint le paragraphe (1) est coupable d'un acte criminel et encourt un emprisonnement de sept ans.

Destruction des
plantes

(3) Le Ministre peut faire détruire toute plante de pavot somnifère ou de chanvre indien sur pied, cultivée autrement qu'avec l'autorisation et en conformité d'un permis délivré aux termes des règlements. 1960-61, c. 35, art. 6.

Poursuites

Fardeau de la
preuve

7. (1) Dans une dénonciation ou un acte d'accusation visant une infraction à la présente loi ou à l'article 421, 422 ou 423 du *Code criminel*, il n'est pas nécessaire que soient énoncées ou niées, selon le cas, une exception, une exemption, une excuse ou une réserve que prescrit la loi, en ce qui concerne une infraction à la présente loi.

Idem

(2) Dans toutes poursuites sous le régime de la présente loi, il incombe à l'accusé de prouver qu'une exception, une exemption, une excuse ou une réserve, que prescrit la loi, jouent en sa faveur et le poursuivant n'est pas tenu, sauf à titre de réfutation, de prouver que l'exception, l'exemption, l'excuse ou la réserve ne jouent pas en faveur de l'accusé, qu'elles aient été ou non énoncées dans la dénonciation ou l'acte d'accusation. 1960-61, c. 35, art. 7.

Procédure
applicable aux
poursuites pour
trafic de
stupéfiants

8. Dans toutes poursuites pour une violation du paragraphe 4(2), si l'accusé n'avoue pas sa culpabilité, le procès doit s'instruire comme s'il s'agissait d'une poursuite pour une infraction prévue par l'article 3, et après que le poursuivant a terminé son exposé et qu'il a été fourni à l'accusé une occasion de présenter une réplique et une défense complètes, la cour doit statuer sur la question de savoir si l'accusé était ou non en possession du stupéfiant contrairement aux dispositions de l'article 3; si la cour constate

que l'accusé n'était pas en possession du stupéfiant contrairement aux dispositions de l'article 3; elle doit l'acquitter, mais si elle constate qu'il était en possession du stupéfiant contrairement aux dispositions de l'article 3, il doit être fourni à l'accusé une occasion de démontrer qu'il n'était pas en possession du stupéfiant pour en faire le trafic, et, par la suite, il doit être fourni au poursuivant une occasion d'établir la preuve que l'accusé était en possession du stupéfiant pour en faire le trafic; si celui-ci démontre qu'il n'était pas en possession du stupéfiant pour en faire le trafic, il doit être acquitté de l'infraction dont fait mention l'acte d'accusation, mais il doit être déclaré coupable d'une infraction aux termes de l'article 3 et condamné en conséquence; et si l'accusé ne démontre pas qu'il n'était pas en possession du stupéfiant pour en faire le trafic, il doit être déclaré coupable de l'infraction dont fait mention l'acte d'accusation et condamné en conséquence. 1960-61, c. 35, art. 8.

Certificat de
l'analyste

9. (1) Sous réserve du présent article, le certificat d'un analyste portant qu'il a analysé ou examiné une substance et énonçant le résultat de son analyse ou de son examen est recevable en preuve dans toute poursuite pour une infraction mentionnée au paragraphe 7(1) et, en l'absence de preuve contraire, constitue une preuve des déclarations qu'il contient sans qu'il soit nécessaire d'établir l'authenticité de la signature de la personne paraissant avoir signé le certificat ni de justifier de sa qualité officielle.

Présence de
l'analyste

(2) La partie contre laquelle le certificat d'un analyste est produit en conformité du paragraphe (1) peut, avec la permission de la cour, exiger la présence de ce dernier aux fins de contre-interrogatoire.

Avis

(3) Aucun certificat n'est recevable en preuve conformément au paragraphe (1) à moins que la partie qui se dispose à le produire n'ait, avant le procès, donné à la partie contre laquelle il doit être produit un avis raisonnable de l'intention de le produire, avec une copie du certificat. 1968-69, c. 41, art. 12.

Perquisition, saisie et confiscation

Perquisition,
fouille et saisie

10. (1) Un agent de la paix peut, à toute époque,

a) sans mandat, entrer et perquisitionner dans tout endroit autre qu'une maison d'habitation, et, sous l'autorité d'un mandat de main-forte ou d'un mandat délivré aux termes du présent article, entrer et perquisitionner dans toute maison d'habitation où il croit, en se fondant sur des motifs raisonnables, qu'il se trouve un stupéfiant au moyen ou à l'égard duquel une infraction à la présente loi a été commise;

b) fouiller toute personne trouvée dans un semblable endroit; et

c) saisir et enlever tout stupéfiant découvert dans un tel endroit, toute chose qui s'y trouve et dans laquelle il soupçonne en se fondant sur des motifs raisonnables qu'un stupéfiant est contenu ou caché, ou toute autre chose au moyen ou à l'égard de laquelle il croit en se fondant sur des motifs raisonnables qu'une infraction à la présente loi a été commise, ou qui peut constituer une preuve établissant qu'une semblable infraction a été commise.

Mandat de
perquisition
d'une maison
d'habitation

(2) Un juge de paix convaincu, d'après une dénonciation faite sous serment, qu'il existe des motifs raisonnables de croire qu'un stupéfiant au moyen ou à l'égard duquel une infraction à la présente loi a été commise se trouve dans une maison d'habitation quelconque, peut délivrer un mandat portant sa signature et autorisant un agent de la paix y nommé à entrer à toute heure dans la maison d'habitation pour découvrir des stupéfiants.

Mandat de
main-forte

(3) Un juge de la Cour fédérale du Canada doit, à la demande du Ministre, délivrer un mandat de main-forte autorisant et habilitant la personne qui y est nommée, aidée et assistée de tel individu que la personne y nommée peut requérir, à entrer à toute heure dans une maison d'habitation quelconque pour découvrir des stupéfiants.

Pouvoirs d'un
agent de la paix

(4) Aux fins d'exercer son autorité en vertu du présent article, un agent de la paix peut, avec l'assistance qu'il estime nécessaire, forcer toute porte, fenêtre, serrure, targette, enfoncer

tout parquet, mur, plafond, compartiment, briser toute tuyauterie, boîte, tout contenant ou toute autre chose.

Demande de
restitution

(5) Lorsqu'un stupéfiant ou une autre chose a été saisi en vertu du paragraphe (1), toute personne peut, dans un délai de deux mois à compter de la date d'une telle saisie, moyennant avis préalable donné à la Couronne de la manière prescrite par les règlements, demander à un magistrat ayant juridiction dans le territoire où la saisie a été faite de rendre une ordonnance de restitution prévue au paragraphe (6).

Ordonnance de
restitution

(6) Sous réserve des paragraphes (8) et (9), lorsque, après audition de la demande faite selon le paragraphe (5), le magistrat est convaincu

a) que le requérant a droit à la possession du stupéfiant ou autre chose saisie, et

b) que la chose ainsi saisie n'est pas, ou ne sera pas, requise à titre de preuve dans des poursuites relatives à une infraction à la présente loi,

il doit ordonner que la chose ainsi saisie soit restituée immédiatement au requérant, et lorsque le magistrat est convaincu que le requérant a droit à la possession de la chose ainsi saisie, mais ne l'est pas quant à la question mentionnée à l'alinéa b), il doit ordonner que la chose ainsi saisie soit restituée au requérant

c) à l'expiration d'un délai de quatre mois à compter de la date de cette saisie, si aucune poursuite relative à une infraction à la présente loi n'a été entamée avant l'expiration dudit délai, ou

d) dans tout autre cas, lorsqu'il a été définitivement statué sur ces poursuites.

S'il n'est fait
aucune
demande

(7) Lorsqu'il n'a été fait aucune demande concernant la remise de tout stupéfiant ou autre chose saisie conformément au paragraphe (1) dans un délai de deux mois à compter de la date de cette saisie, ou qu'une demande à cet égard a été faite mais, qu'après audition de la demande, aucune ordonnance de restitution n'a été rendue, la chose ainsi saisie doit être livrée au Ministre qui peut en disposer de la façon qu'il juge opportune.

Confiscation du stupéfiant sur déclaration de culpabilité

(8) Lorsqu'une personne a été déclarée coupable d'une infraction à l'article 3, 4 ou 5, tout stupéfiant saisi en conformité du paragraphe (1), au moyen ou à l'égard duquel l'infraction a été commise, tout argent ainsi saisi qui a été utilisé pour l'achat de ce stupéfiant ainsi que toute aiguille ou seringue hypodermique, toute machine pour la mise en capsules ou autre appareil ainsi saisis qui ont été utilisés de quelque façon en rapport avec l'infraction sont confisqués au profit de Sa Majesté et il doit en être disposé ainsi qu'en ordonne le Ministre.

Confiscation du moyen de transport sur demande

(9) Lorsqu'une personne a été déclarée coupable d'une infraction à l'article 4 ou 5, la cour peut, à la demande du procureur de la Couronne, ordonner que tout moyen de transport saisi en vertu du paragraphe (1), dont l'utilisation de quelque manière que ce soit en rapport avec l'infraction a été prouvée, soit confisqué, et, dès qu'une semblable ordonnance est rendue, le moyen de transport est confisqué au profit de Sa Majesté et, sauf ce que prévoit l'article 11, il doit à l'expiration de trente jours à compter de la date de cette confiscation en être disposé ainsi qu'en ordonne le Ministre. 1960-61, c. 35, art. 10; 1968-69, c. 41, art. 14.

Demande formulée par celui qui revendique un intérêt

11. (1) Lorsqu'un moyen de transport est confisqué au profit de Sa Majesté comme le prévoit le paragraphe 10(9), toute personne (autre qu'une personne déclarée coupable de l'infraction qui a entraîné la confiscation ou une personne en la possession de qui le moyen de transport se trouvait au moment de la saisie) qui revendique un intérêt dans ledit moyen de transport, à titre de propriétaire, créancier hypothécaire, détenteur de privilège ou détenteur de tout semblable intérêt, peut, dans les trente jours après une semblable confiscation, demander au moyen d'un avis écrit, adressé à un juge, que soit rendue une ordonnance en conformité du paragraphe (4).

Date de l'audition

(2) Le juge à qui une demande est faite en conformité du paragraphe (1) doit fixer, pour l'audition de l'affaire, une date postérieure par au moins trente jours à celle où la demande a été produite.

Avis

(3) Le requérant doit signifier au Ministre un avis de la demande et de l'audition, au

moins quinze jours avant la date fixée pour l'audition.

Ordonnance du
juge

(4) Si, à l'audition d'une demande, il est établi à la satisfaction du juge,

a) que le requérant est innocent de toute complicité relativement à l'infraction qui a entraîné la confiscation et de toute collusion à l'égard de cette infraction avec la personne qui en a été déclarée coupable, et

b) que le requérant a exercé tout le soin raisonnable à l'égard de la personne à qui il a été permis d'obtenir la possession du moyen de transport pour se convaincre qu'il n'en serait vraisemblablement pas fait usage en rapport avec la perpétration d'un acte illégal ou, dans le cas d'un créancier hypothécaire ou d'un détenteur de privilège, qu'il a exercé un semblable soin à l'égard du débiteur hypothécaire ou du donneur de privilège,

le requérant a droit à une ordonnance déclarant que son intérêt n'est pas atteint par une semblable confiscation et énonçant la nature et l'étendue de son intérêt.

Appel

(5) Le requérant ou le Ministre peut interjeter appel, auprès de la cour d'appel, d'une ordonnance rendue aux termes du paragraphe (4). L'exercice de ce droit d'appel, ainsi que l'audition dudit appel et la décision en l'espèce sont assujettis à la procédure ordinaire régissant les appels d'ordonnances ou de jugements d'un juge, portés devant la cour d'appel.

Demande au
Ministre

(6) Le Ministre doit, sur demande à lui faite par toute personne qui a obtenu une ordonnance définitive sous le régime du présent article,

a) ordonner que le moyen de transport auquel se rattache l'intérêt du réclamant soit remis à celui-ci; ou

b) ordonner qu'un montant égal à la valeur de l'intérêt du requérant, établie dans l'ordonnance, soit remis à celui-ci.

Définitions

«cour d'appel»

(7) Au présent article

«cour d'appel» désigne, dans la province où une ordonnance prévue au présent article est rendue, la cour d'appel pour cette province

selon la définition de «cour d'appel» à l'article 2 du *Code criminel*;

«juge»

«juge» désigne

a) dans la province de Québec, un juge de la Cour supérieure du district où le moyen de transport, à l'égard duquel est faite une demande d'ordonnance aux termes du présent article, a été saisi,

b) dans les provinces de Terre-Neuve et de l'Île-du-Prince-Édouard, un juge de leurs Cours suprêmes,

b.1) dans les provinces du Nouveau-Brunswick, d'Alberta et de la Saskatchewan, un juge de la Cour du Banc de la Reine de la province,

c) dans le territoire du Yukon et les territoires du Nord-Ouest, un juge de la Cour suprême de ce territoire ou de ces territoires, et

d) dans toute province non mentionnée aux alinéas a) à c), un juge de la cour de comté ou de district pour le comté ou le district où tout semblable moyen de transport a été saisi. S.R., c. N-1, art. 11; 1972, c. 17, art. 6; 1974-75-76, c. 48, art. 25; 1978-79, c. 11, art. 10.

Généralités

Règlements

12. Le gouverneur en conseil peut édicter des règlements

a) prévoyant la délivrance de permis

(i) d'importation, d'exportation, de vente, de fabrication, de production ou de distribution de stupéfiants, et

(ii) de culture du pavot somnifère ou du chanvre indien;

b) prescrivant la forme, la durée et les modalités de tout permis mentionné à l'alinéa a) ainsi que les droits exigibles à cet égard, et prévoyant l'annulation et la suspension desdits permis;

c) autorisant la vente, la possession ou une autre forme de négoce de stupéfiants, et prescrivant les circonstances et les conditions dans lesquelles, ainsi que les personnes par qui, des stupéfiants peuvent être vendus ou

détenus en possession, ou faire l'objet d'une autre forme de négoce;

d) enjoignant aux médecins, dentistes, vétérinaires, pharmaciens et autres personnes qui font le négoce des stupéfiants, selon que l'autorisent la présente loi ou les règlements, de tenir des registres et de faire des déclarations;

e) autorisant la communication de tout renseignement obtenu sous le régime de la présente loi ou des règlements aux autorités provinciales officiellement chargées de la délivrance des permis;

f) prescrivant l'imposition d'une amende d'au plus cinq cents dollars ou d'un emprisonnement d'au plus six mois, ou à la fois des deux peines susdites, sur déclaration sommaire de culpabilité pour violation de tout règlement; et

g) de façon générale, en vue de la réalisation des objets de la présente loi et de l'application de ses dispositions. 1960-61, c. 35, art. 12.

Nomination
d'analystes

13. Le gouverneur en conseil peut nommer toute personne au poste d'analyste pour les objets de la présente loi. 1960-61, c. 35, art. 13.

Modification de
l'annexe

14. Le gouverneur en conseil peut, à l'occasion, modifier l'annexe en y ajoutant ou en retranchant toute substance qu'il estime nécessaire, dans l'intérêt public, d'y ajouter ou d'en retrancher, selon le cas. 1960-61, c. 35, art. 14.

*PARTIE II

DÉTENTION PRÉVENTIVE ET DÉTENTION AUX FINS DE TRAITEMENT

**Nota:* Partie II (articles 15 à 19) entrera en vigueur par proclamation. (DORS/61-359)

Sentence de
détention
préventive

15. Lorsqu'une personne est déclarée coupable d'une infraction à l'article 4 ou 5, la cour doit, si cette personne

a) a été antérieurement déclarée coupable, à au moins une occasion distincte et indépendante, d'une infraction à l'article 4 ou 5 de la

présente loi ou d'une infraction au paragraphe 4(3) du chapitre 201 des Statuts révisés du Canada de 1952, ou

b) a été antérieurement condamnée à la détention préventive en vertu du présent article,

imposer une sentence de détention préventive dans un pénitencier pour une période indéterminée, au lieu de toute autre sentence qui pourrait être imposée pour l'infraction dont elle a été déclarée coupable. 1960-61, c. 35, art. 15.

Renvoi pour
observation et
examen

16. Lorsqu'une personne est accusée d'une infraction à l'article 3, 4 ou 5, la cour ou tout juge ayant juridiction pour connaître de l'infraction peut, sur demande du procureur de la Couronne, ou sur demande de la personne accusée de l'infraction ou de son procureur, avant ou après le renvoi de cette personne pour qu'elle subisse son procès et avant que soit prononcée toute sentence susceptible d'être imposée pour l'infraction, renvoyer cette personne, au moyen d'une ordonnance par écrit, en la détention que la cour prescrit pour observation et examen pendant une période d'au plus sept jours. 1960-61, c. 35, art. 16.

Condamnation
à la détention
aux fins de
traitement

17. (1) Lorsqu'une personne, qui a été renvoyée en détention pour observation et examen conformément à l'article 16, est déclarée coupable de l'infraction à l'égard de laquelle elle a été renvoyée en détention aux fins susdites, la cour doit, avant de prononcer la sentence, étudier les témoignages faisant suite à l'observation et l'examen, y compris la déposition d'au moins un médecin dûment qualifié et les autres dépositions qui peuvent être produites, et, si elle est convaincue, après avoir étudié ces témoignages et dépositions que l'individu déclaré coupable est une personne adonnée aux stupéfiants, la cour doit, nonobstant toute disposition de l'article 15, le condamner à la détention aux fins de traitement pour une période indéterminée, au lieu d'imposer toute autre sentence susceptible d'être prononcée pour l'infraction dont il a été déclaré coupable.

Appel

(2) Une personne qui est condamnée à la détention aux fins de traitement pour une période indéterminée en vertu du présent article peut interjeter appel de la sentence, à la cour

d'appel, sur toute question de droit ou de fait ou toute question mixte de droit et de fait.

Application du
Code criminel

(3) Les dispositions de l'article 695 du *Code criminel*, relatives aux appels d'une sentence de détention préventive, s'appliquent *mutatis mutandis* à un appel prévu au présent article. 1960-61, c. 35, art. 17.

Incarcération
aux fins de
traitement

18. (1) Lorsqu'une personne est condamnée à la détention aux fins de traitement pour une période indéterminée, elle doit être détenue à ces fins dans une institution maintenue et dirigée conformément à la *Loi sur les pénitenciers*.

Application de
la *Loi sur la
libération
conditionnelle
de détenus*

(2) Une personne qui est condamnée à la détention aux fins de traitement pour une période indéterminée est assujettie à la *Loi sur la libération conditionnelle de détenus* et, pour tous les objets de cette loi, elle est réputée,

a) durant la période de son incarcération, un détenu au sens où l'entend cette loi, et

b) dès sa libération aux termes d'un certificat de la Commission des libérations conditionnelles, un détenu à libération conditionnelle au sens où l'entend cette loi.

Limitation

(3) Une sentence de détention aux fins de traitement pour une période indéterminée, lorsque la personne ainsi condamnée n'a pas, à quelque époque avant la déclaration de culpabilité qui a entraîné la sentence, été déclarée coupable d'une infraction à la présente loi ou d'une infraction au chapitre 201 des Statuts révisés du Canada de 1952, expire à la fin de cette période, qui ne doit pas excéder dix ans à compter de la date de sa libération aux termes d'un certificat de la Commission des libérations conditionnelles, que fixe cette dernière, à moins qu'avant cette époque sa libération ne soit frappée de déchéance ou révoquée. 1960-61, c. 35, art. 18.

Accord avec les
provinces

19. (1) Lorsque la législature d'une province édicte une loi dont l'objet est de prévoir la détention aux fins de traitement des personnes qui, bien qu'elles ne soient pas accusées de l'infraction de possession d'un stupéfiant, sont adonnées aux stupéfiants, le Ministre peut conclure avec la province, sous réserve de l'approbation du gouverneur en conseil, un accord portant sur l'incarcération et le traitement de

ces personnes dans des institutions maintenues et dirigées en conformité de la *Loi sur les pénitenciers* ainsi que sur la libération et la surveillance de ces personnes en conformité de la *Loi sur la libération conditionnelle de détenus*.

Idem

(2) Une personne adonnée aux narcotiques, renvoyée en détention aux fins de traitement sous le régime d'une loi de la législature d'une province, est réputée, pour les objets de la *Loi sur les pénitenciers* et de la *Loi sur la libération conditionnelle de détenus*, avoir été condamnée à la détention aux fins de traitement en vertu de la présente loi. 1960-61, c. 35, art. 19.

ANNEXE

1. Pavot à opium (*Papaver somniferum*), ses préparations, ses dérivés, ses alcaloïdes et ses sels, y compris:

- (1) Opium,
- (2) Codéine (méthylmorphine),
- (3) Morphine,
- (4) Thébaïne,

et leurs préparations, leurs dérivés et leurs sels, y compris:

- (5) Acétorphine,
- (6) Acétyldihydrocodéine,
- (7) Benzylmorphine,
- (8) Codoxime,
- (9) Désomorphine (dihydrodésoxymorphine),
- (10) Diacétylmorphine (héroïne),
- (11) Dihydrocodéine,
- (12) Dihydromorphine,
- (13) Éthylmorphine,
- (14) Étorphine,
- (15) Hydrocodone (dihydrocodéinone),
- (16) Hydromorphone (dihydromorphinone),
- (17) Hydromorphinol (dihydro-14-hydroxymorphine),
- (18) Méthylésorphine (méthyl-6- Δ^6 -désoxymorphine),
- (19) Méthyldihydromorphine (méthyl-6-dihydromorphine),
- (20) Métopon (méthyl-7-dihydromorphine),
- (21) N-oxymorphine (N-oxymorphine),
- (22) Myrophine (ester myristique de la benzylmorphine),
- (23) Nalorphine (N-allylnormorphine),
- (24) Nicocodéine (6-nicotinylcodéine),
- (25) Nicomorphine (dinicotinylmorphine),
- (26) Norcodéine,
- (27) Normorphine,
- (28) Oxycodone (dihydrooxycodéinone),
- (29) Oxymorphone (dihydrooxymorphinone),
- (30) Pholcodine (morpholinyl éthyl morphine), et
- (31) Thébacone (acétyldihydrocodéinone),

mais non compris:

- (32) Apomorphine,
- (33) Cyprénorphine,
- (33.1) Naloxone,
- (34) Narcotine,
- (35) Papavérine, et
- (36) Graine de pavot.

2. Coca (*érythroxylone*), ses préparations, ses dérivés, ses alcaloïdes et ses sels, y compris:

- (1) Feuilles de coca,
- (2) Cocaïne, et
- (3) Ecgonine (acide hydroxy-3 tropane-2 carboxylique).

3. Chanvre indien (*Cannabis sativa*), ses préparations, ses dérivés et préparations synthétiques semblables, ainsi:

- (1) Résine de cannabis,
- (2) Cannabis (marihuana),
- (3) Cannabidiol,
- (4) Cannabinol (n-amyl-3 triméthyl-6,6,9 dibenzo-6 pyran-1-ol),
- (5) Pyrahexyl (n-hexyl-3 triméthyl-6,6,9 tétrahydro-7,8,9,10 dibenzo-6 pyran-1-ol), et
- (6) Tétrahydrocannabinol.

4. Phénylpipéridines, leurs préparations, leurs dérivés et leurs sels, y compris:

- (1) Alpéridine (méthyl-1 allyl-3 phényl-4 propionoxy-4 pipéridine),
- (2) Alphaméprodine (α -méthyl-1 éthyl-3 phényl-4 propionoxy-4 pipéridine),
- (3) Alphaprodine (α -diméthyl-1,-3 phényl-4 propionoxy-4 pipéridine),
- (4) Aniléridine (ester éthylique de l'acide p-aminophényl)-2-éthyl-1 phényl-4 pipéridine carboxylique-4),
- (5) Bétaméprodine (β -méthyl-1 éthyl-3 propionoxy-4 pipéridine),
- (6) Bétaprodine (β -diméthyl-1,3 phényl-4 propionoxy-4 pipéridine),
- (7) Benzéthidine (ester éthylique de l'acide [(benzyloxy-éthyl-2)]-1 phényl-4 pipéridine carboxylique-4),
- (8) Diphénoxyate (ester éthylique de l'acide [(cyano-3)-diphénylpropyl-3,3] phényl-4 pipéridine carboxylique-4),
- (9) Etoxéridine (ester éthylique de l'acide [(hydroxyéthoxy-2)-2 éthyl]-1 phényl-4 pipéridine carboxylique-4),
- (10) Fentanyl (phényléthyl-1 (phénylpropionylamino)-4 pipéridine),
- (11) Furéthidine (ester éthylique de l'acide [(tétrahydrofurfuryloxyéthyl-2)]-1 phényl-4 pipéridine carboxylique-4),
- (12) Hydroxypéthidine (ester éthylique de l'acide méthyl-1 méthahydroxyphényl-4 pipéridine carboxylique-4),
- (13) Cétobémidone (éthyl cétone (hydroxyphényl-3)-4 méthyl-1 pipéridyl-4),
- (14) Méthylphénylisonipecotonitrile (cyano-4 méthyl-1 phényl-4 pipéridine),

- (15) Morphéridine (ester éthylique de l'acide (morpholino-éthyl-2)-1 phényl-4 pipéridine carboxylique-4),
- (16) Norpéthidine (ester éthylique de l'acide phényl-4 pipéridine carboxylique-4),
- (17) Péthidine (ester éthylique de l'acide méthyl-1 phényl-4 pipéridine carboxylique-4),
- (18) Phénopéridine (ester éthylique de l'acide [(hydroxy-3 phényl-3) propyl]-1 phényl-4 pipéridine carboxylique-4),
- (19) Piminodine (ester éthylique de l'acide [(phénylamino)-propyl-3]-1 phényl-4 pipéridine carboxylique-4),
- (20) Propéridine (ester isopropylique de l'acide méthyl-1 phényl-4 pipéridine carboxylique-4), et
- (21) Trimépéridine (triméthyl-1,2,5 phényl-4 propionoxy-4 pipéridine),

mais non compris:

- (22) Carbaméthidine (ester éthylique de l'acide (carbaméthyl-2) phényl-4 pipéridine carboxylique-4),
- (23) Oxphénéridine (ester éthylique de l'acide (hydroxy-2 phényléthyl-2) phényl-4 pipéridine carboxylique-4).

5. Phénazépines, leurs préparations, leurs dérivés et leurs sels, y compris:

- (1) Proheptazine (diméthyl-1,3 phényl-4 propionoxy-4 hexaméthylènimine),

mais non compris:

- (2) Ethoheptazine (ester éthylique de l'acide méthyl-1 phényl-4 azépine carboxylique-4),
- (3) Météthoheptazine (ester éthylique de l'acide (hexahydro-1,2) phényl-4 pipéridine carboxylique-4) diméthyl,
- (4) Métheptazine (ester éthylique de l'acide hexahydro-1,2) diméthyl phénylazépine-4 carboxylique-4).

6. Amidones, leurs préparations, leurs dérivés et leurs sels, y compris:

- (1) Diméthylaminodiphénylbutanonitrile (cyano-4 diméthylamino-2 diphénylbutane-4,4),
- (2) Dipipanone (diphényl-4,4 pipéridine-6 heptanone-3),
- (3) Isométhadone (diphényl-4,4 méthyl-5 diméthylamino-6 hexanone-3),
- (4) Méthadone (diméthylamino-6 diphényl-4,4 heptanone-3),
- (5) Norméthadone (diphényl-4,4 diméthylamino-6 hexanone-3), et
- (6) Phénadoxone (diphényl-4,4 morpholino-6 heptanone-3).

7. Méthadols, leurs préparations, leurs dérivés et leurs sels, y compris:

- (1) Acétylméthadol (diméthylamino-6 diphenyl-4,4 acétoxy-3 heptane),
- (2) Alphacétylméthadol (α -diméthylamino-6 diphenyl-4,4 acétoxy-3 heptane),
- (3) Alphaméthadol (α -diméthylamino-6 diphenyl-4,4 heptanol-d),
- (4) Bêtacétylméthadol (β -diméthylamino-6 diphenyl-4,4 acétoxy-3 heptane),
- (5) Bêtaméthadol (β -diméthylamino-6 diphenyl-4,4 heptanol-3),
- (6) Dimépheptanol (diméthylamino-6 diphenyl-4,4 heptanol-3), et
- (7) Noracyméthadol (α -diméthylamino-6 diphenyl-4,4 acétoxy-3 heptane).

8. Phénalcoxames, leurs préparations, leurs dérivés et leurs sels, y compris:

- (1) Diménoxadol (ester diméthylaminoéthylque de l'acide éthoxyl-1 diphenyl-1,1 acétique),
- (2) Butyrate de dioxypéthyl (morpholino-4 diphenyl- 2,2-butyrate éthylque),

mais non compris:

- (3) Propoxyphène (diméthylamino-4 diphenyl-1,2 métyl-3 propionoxy-2 butane).

9. Thiambutènes, leurs préparations, leurs dérivés et leurs sels, y compris:

- (1) Diéthylthiambutène (diéthylamino-3 di-(thiényl-2' \rightarrow Δ - $\beta\phi\nu\epsilon\xi\epsilon$) \rightarrow Δ)
- (2) Diméthylthiambutène (diméthylamino-3 di-(thiényl-2' \rightarrow Δ - $\beta\phi\nu\epsilon\xi\epsilon$) \rightarrow Δ $\epsilon\nu$)
- (3) Ethylméthylthiambutène (éthylméthylamino-3 di-(thiényl-2' \rightarrow Δ - $\beta\phi\nu\epsilon\xi\epsilon$) \rightarrow Δ)

10. Moramides, leurs préparations, leurs dérivés et leurs sels, y compris:

- (1) Dextromoramide (*d*-méthyl-3 diphenyl-2,2 morpholino-4 butyryl pyrrolidine),
- (2) Acide diphenylmorpholinoisovalérique (acide méthyl-2 morpholino-3 diphenyl-1,1 propionique),
- (3) Lévomoramide (*l*-méthyl-3 diphenyl-2,2 morpholino-4 butyryl pyrrolidine), et
- (4) Racémoramide (*dl*-méthyl-3 diphenyl-2,2 morpholino-4 butyryl pyrrolidine).

11. Morphinanes, leurs préparations, leurs dérivés et leurs sels, y compris:

- (1) Lévométhorphane (*l*-méthoxy-3 N-méthylmorphinane),

- (2) Lévorphanol (*l*-hydroxy-3 N-méthylmorphinane),
 - (3) Lévo-phénacymorphane (α -hydroxy-3 N-phénylmorphinane),
 - (4) Norlévorphanol (*l*-hydroxy-3 N-morphinane),
 - (5) Phénomorphane (hydroxy-3 N-phénéthylmorphinane),
 - (6) Racéméthorphane (*dl*-méthoxy-3 N-méthylmorphinane),
et
 - (7) Racémorphane (*dl*-hydroxy-3 N-méthylmorphinane),
- mais non compris:
- (8) Dextrométhorphane (*d*-méthoxy-3 N-méthylmorphinane),
 - (9) Dextrorphane (*d*-hydroxy-3 N-méthylmorphinane),
 - (10) Levallorphane (*l*-hydroxy-3 N-allylmorphinane), et
 - (11) Levargorphane (*l*-hydroxy-3 N-propargylmorphinane),
 - (12) Butorphanol et ses sels.

12. Benzazocines, leurs préparations, leurs dérivés et leurs sels, y compris:

- (1) Phénazocine (hexahydro-1,2,3,4,5,6, diméthyl-6,11 phénéthyl-3 méthano-2,6 benzo-3 azocin-8-ol), et
- (2) Méthazocine (hexahydro-1,2,3,4,5,6, triméthyl-3,6,11 méthano-2,6 benzo-3 azocin-8-ol),

mais non compris:

- (3) Pentazocine (hexahydro-1,2,3,4,5,6 diméthyl-6,11 méthyl-3 butényl-2)-3 méthano-2,6 benzo-3 azocin-8-ol), et
- (4) Cycloazocine (hexahydro-1,2,3,4,5,6 diméthyl-6-11 cyclopropylméthyl)-3 méthano-2,6 benzo-3 azocin-8-ol).

13. Ampromides, leurs préparations, leurs dérivés et leurs sels, y compris:

- (1) Diampromide (N-[2-méthylphényléthylamino)-propyl]-propionanilide),
- (2) Phénampromide (N-[2-1-méthyl-2-pipéridino éthyl]-propionanilide),
- (3) Propiram (N-(1-méthyl-2-pipéridinoéthyl)-N-2-pyridyl-propionamide).

14. Benzimidazoles, leurs préparations, leurs dérivés et leurs sels, y compris:

- (1) Clonitazène (2-(p-chlorobenzyl)-1-diéthylaminoéthyl-5-nitrobenzimidazole),
- (2) Étonitazène (2-(p-éthoxybenzyl)-1-diéthylaminoéthyl-5-nitrobenzimidazole).

15. Phencyclidine, ses sels et ses dérivés.

S.R., c. N-1, annexe; DORS/71-226, (359); TR/73-48; TR/77-113.

FIN

CHAPTER N-1

An Act to provide for the control of narcotic drugs

SHORT TITLE

Short title

1. This Act may be cited as the *Narcotic Control Act*. 1960-61, c. 35, s. 1.

INTERPRETATION

Definitions

2. In this Act

"analyst"
«analyste»

"analyst" means a person designated as an analyst under the *Food and Drugs Act* or under this Act;

"conveyance"
«moyen...»

"conveyance" includes any aircraft, vessel, motor vehicle or other conveyance of any description whatever;

"marihuana"
«chanvre...»
"Minister"
«Ministre»

"marihuana" means *Cannabis sativa* L.;

"Minister" means

(a) with respect to Part I, the Minister of National Health and Welfare, and

(b) with respect to Part II, the Minister of Justice;

"narcotic"
«stupéfiant»

"narcotic" means any substance included in the schedule or anything that contains any substance included in the schedule;

"narcotic addict"
«personne...»

"narcotic addict" means a person who through the use of narcotics,

(a) has developed a desire or need to continue to take a narcotic, or

(b) has developed a psychological or physical dependence upon the effect of a narcotic;

"opium poppy"
«pavot...»
"possession"
«possession»

"opium poppy" means *Papaver somniferum* L.;

"possession" means possession as defined in the *Criminal Code*;

"traffic"
«trafiquer»

"traffic" means

(a) to manufacture, sell, give, administer, transport, send, deliver or distribute, or

(b) to offer to do anything mentioned in paragraph (a)

otherwise than under the authority of this Act or the regulations. 1960-61, c. 35, s. 2.

PART I
OFFENCES AND ENFORCEMENT

Particular Offences

Possession of
narcotic

3. (1) Except as authorized by this Act or the regulations, no person shall have a narcotic in his possession.

Offence

(2) Every person who violates subsection (1) is guilty of an offence and is liable

(a) upon summary conviction for a first offence, to a fine of one thousand dollars or to imprisonment for six months or to both fine and imprisonment, and for a subsequent offence, to a fine of two thousand dollars or to imprisonment for one year or to both fine and imprisonment; or

(b) upon conviction on indictment, to imprisonment for seven years. 1960-61, c. 35, s. 3; 1968-69, c. 41, s. 12.

Trafficking

4. (1) No person shall traffic in a narcotic or any substance represented or held out by him to be a narcotic.

Possession for
purpose of
trafficking

(2) No person shall have in his possession any narcotic for the purpose of trafficking.

Offence

(3) Every person who violates subsection (1) or (2) is guilty of an indictable offence and is liable to imprisonment for life. 1960-61, c. 35, s. 4.

Importing and
exporting

5. (1) Except as authorized by this Act or the regulations, no person shall import into Canada or export from Canada any narcotic.

Offence

(2) Every person who violates subsection (1) is guilty of an indictable offence and is liable to imprisonment for life but not less than seven years. 1960-61, c. 35, s. 5.

Cultivation of
opium poppy or
marihuana

6. (1) No person shall cultivate opium poppy or marihuana except under authority of and in accordance with a licence issued to him under the regulations.

Offence (2) Every person who violates subsection (1) is guilty of an indictable offence and is liable to imprisonment for seven years.

Destruction of plant (3) The Minister may cause to be destroyed any growing plant of opium poppy or marihuana cultivated otherwise than under authority of and in accordance with a licence issued under the regulations. 1960-61, c. 35, s. 6.

Prosecutions

Burden of proving exception, etc. 7. (1) No exception, exemption, excuse or qualification prescribed by law is required to be set out or negated, as the case may be, in an information or indictment for an offence under this Act or under section 421, 422 or 423 of the *Criminal Code* in respect of an offence under this Act.

Idem (2) In any prosecution under this Act the burden of proving that an exception, exemption, excuse or qualification prescribed by law operates in favour of the accused is on the accused, and the prosecutor is not required, except by way of rebuttal, to prove that the exception, exemption, excuse or qualification does not operate in favour of the accused, whether or not it is set out in the information or indictment. 1960-61, c. 35, s. 7.

Procedure in prosecution for trafficking 8. In any prosecution for a violation of subsection 4(2), if the accused does not plead guilty, the trial shall proceed as if it were a prosecution for an offence under section 3, and after the close of the case for the prosecution and after the accused has had an opportunity to make full answer and defence, the court shall make a finding as to whether or not the accused was in possession of the narcotic contrary to section 3; if the court finds that the accused was not in possession of the narcotic contrary to section 3, he shall be acquitted but if the court finds that the accused was in possession of the narcotic contrary to section 3, he shall be given an opportunity of establishing that he was not in possession of the narcotic for the purpose of trafficking, and thereafter the prosecutor shall be given an opportunity of adducing evidence to establish that the accused was in possession of the narcotic for the pur-

pose of trafficking; if the accused establishes that he was not in possession of the narcotic for the purpose of trafficking, he shall be acquitted of the offence as charged but he shall be convicted of an offence under section 3 and sentenced accordingly; and if the accused fails to establish that he was not in possession of the narcotic for the purpose of trafficking, he shall be convicted of the offence as charged and sentenced accordingly. 1960-61, c. 35, s. 8.

Certificate of
analyst

9. (1) Subject to this section, a certificate of an analyst stating that he has analyzed or examined a substance and stating the result of his analysis or examination is admissible in evidence in any prosecution for an offence mentioned in subsection 7(1), and in the absence of evidence to the contrary is proof of the statements contained in the certificate without proof of the signature or the official character of the person appearing to have signed the certificate.

Attendance of
analyst

(2) The party against whom a certificate of an analyst is produced pursuant to subsection (1) may, with leave of the court, require the attendance of the analyst for the purposes of cross-examination.

Notice

(3) No certificate shall be received in evidence pursuant to subsection (1) unless the party intending to produce it has, before the trial, given to the party against whom it is intended to be produced reasonable notice of such intention together with a copy of the certificate. 1968-69, c. 41, s. 12.

Search, Seizure and Forfeiture

Search and
seizure

10. (1) A peace officer may, at any time,
(a) without a warrant enter and search any place other than a dwelling-house, and under the authority of a writ of assistance or a warrant issued under this section, enter and search any dwelling-house in which he reasonably believes there is a narcotic by means of or in respect of which an offence under this Act has been committed;
(b) search any person found in such place; and

(c) seize and take away any narcotic found in such place, any thing in such place in which he reasonably suspects a narcotic is contained or concealed, or any other thing by means of or in respect of which he reasonably believes an offence under this Act has been committed or that may be evidence of the commission of such an offence.

Warrant to
search
dwelling-house

(2) A justice who is satisfied by information upon oath that there are reasonable grounds for believing that there is a narcotic, by means of or in respect of which an offence under this Act has been committed, in any dwelling-house may issue a warrant under his hand authorizing a peace officer named therein at any time to enter the dwelling-house and search for narcotics.

Writ of
assistance

(3) A judge of the Federal Court of Canada shall, upon application by the Minister, issue a writ of assistance authorizing and empowering the person named therein, aided and assisted by such person as the person named therein may require, at any time, to enter any dwelling-house and search for narcotics.

Powers of peace
officer

(4) For the purpose of exercising his authority under this section, a peace officer may, with such assistance as he deems necessary, break open any door, window, lock, fastener, floor, wall, ceiling, compartment, plumbing fixture, box, container or any other thing.

Application for
restoration

(5) Where a narcotic or other thing has been seized under subsection (1), any person may, within two months from the date of such seizure, upon prior notification having been given to the Crown in the manner prescribed by the regulations, apply to a magistrate within whose territorial jurisdiction the seizure was made for an order of restoration under subsection (6).

Order of
restoration

(6) Subject to subsections (8) and (9), where upon the hearing of an application made under subsection (5) the magistrate is satisfied

(a) that the applicant is entitled to possession of the narcotic or other thing seized, and

(b) that the thing so seized is not or will not be required as evidence in any proceedings in respect of an offence under this Act,

he shall order that the thing so seized be restored forthwith to the applicant, and where the magistrate is satisfied that the applicant is entitled to possession of the thing so seized but is not satisfied as to the matters mentioned in paragraph (b), he shall order that the thing so seized be restored to the applicant

(c) upon the expiration of four months from the date of the seizure, if no proceedings in respect of an offence under this Act have been commenced before that time, or

(d) upon the final conclusion of any such proceedings, in any other case.

Where no
application
made

(7) Where no application has been made for the return of any narcotic or other thing seized under subsection (1) within two months from the date of such seizure, or an application therefor has been made but upon the hearing thereof no order of restoration is made, the thing so seized shall be delivered to the Minister who may make such disposition thereof as he thinks fit.

Forfeiture of
narcotic upon
conviction

(8) Where a person has been convicted of an offence under section 3, 4 or 5, any narcotic seized under subsection (1), by means of or in respect of which the offence was committed, any money so seized that was used for the purchase of that narcotic and any hypodermic needle, syringe, capping machine or other apparatus so seized that was used in any manner in connection with the offence is forfeited to Her Majesty and shall be disposed of as the Minister directs.

Forfeiture of
conveyance
upon application

(9) Where a person has been convicted of an offence under section 4 or 5, the court may, upon application by counsel for the Crown, order that any conveyance seized under subsection (1) that has been proved to have been used in any manner in connection with the offence be forfeited, and upon such order being made the conveyance is forfeited to Her Majesty and, except as provided in section 11, shall upon the

expiration of thirty days from the date of such forfeiture be disposed of as the Minister directs. 1960-61, c. 35, s. 10; 1968-69, c. 41, s. 14.

Application by
person claiming
interest

11. (1) Where any conveyance is forfeited to Her Majesty under subsection 10(9), any person (other than a person convicted of the offence that resulted in the forfeiture or a person in whose possession the conveyance was when seized) who claims an interest therein as owner, mortgagee, lienholder or holder of any like interest may, within thirty days after such forfeiture, apply by notice in writing to a judge for an order under subsection (4).

Date of hearing

(2) The judge to whom an application is made under subsection (1) shall fix a day not less than thirty days after the date of filing of the application for the hearing thereof.

Notice

(3) The applicant shall serve a notice of the application and of the hearing upon the Minister at least fifteen days before the day fixed for the hearing.

Order by judge

(4) Where, upon the hearing of an application, it is made to appear to the satisfaction of the judge,

(a) that the applicant is innocent of any complicity in the offence that resulted in the forfeiture and of any collusion in relation to that offence with the person who was convicted thereof, and

(b) that the applicant exercised all reasonable care in respect of the person permitted to obtain possession of the conveyance to satisfy himself that it was not likely to be used in connection with the commission of an unlawful act or, in the case of a mortgagee or lienholder, that he exercised such care with respect to the mortgagor or lien-giver,

the applicant is entitled to an order declaring that his interest is not affected by such forfeiture and declaring the nature and extent of his interest.

Appeal

(5) The applicant or the Minister may appeal to the court of appeal from an order

made under subsection (4) and the appeal shall be asserted, heard and decided according to the ordinary procedure governing appeals to the court of appeal from orders or judgments of a judge.

Application to
Minister

(6) The Minister shall, upon application made to him by any person who has obtained a final order under this section,

(a) direct that the conveyance to which the interest of the applicant relates be returned to the applicant; or

(b) direct that an amount equal to the value of the interest of the applicant, as declared in the order, be paid to him.

Definitions

"court of
appeal"

(7) In this section

"court of appeal" means, in the province in which an order under this section is made, the court of appeal for that province as defined in the definition "court of appeal" in section 2 of the *Criminal Code*;

"judge"

"judge" means

(a) in the Province of Quebec, a judge of the Superior Court for the district in which the conveyance in respect of which an application for an order under this section is made, was seized,

(b) in the Provinces of Newfoundland and Prince Edward Island, a judge of the Supreme Court thereof,

(b.1) in the Provinces of New Brunswick, Alberta and Saskatchewan, a judge of the Court of Queen's Bench thereof,

(c) in the Yukon and Northwest Territories, a judge of the Supreme Court thereof, and

(d) in any province not referred to in paragraphs (a) to (c), a judge of the county or district court for the county or district in which any such conveyance was seized. R.S., c. N-1, s. 11; 1972, c. 17, s. 2; 1974-75-76, c. 48, s. 25; 1978-79, c. 11, s. 10.

12. The Governor in Council may make regulations

- (a) providing for the issue of licences
 - (i) for the importation, export, sale, manufacture, production or distribution of narcotics, and
 - (ii) for the cultivation of opium poppy or marihuana;
- (b) prescribing the form, duration and terms and conditions of any licence described in paragraph (a) and the fees payable therefor, and providing for the cancellation and suspension of such licences;
- (c) authorizing the sale or possession of or other dealing in narcotics and prescribing the circumstances and conditions under which and the persons by whom narcotics may be sold, had in possession or otherwise dealt in;
- (d) requiring physicians, dentists, veterinarians, pharmacists and other persons who deal in narcotics as authorized by this Act or the regulations to keep records and make returns;
- (e) authorizing the communication of any information obtained under this Act or the regulations to provincial professional licensing authorities;
- (f) prescribing the punishment by a fine not exceeding five hundred dollars or imprisonment for a term not exceeding six months, or both, to be imposed upon summary conviction for breach of any regulation; and
- (g) generally, for carrying out the purposes and provisions of this Act. 1960-61, c. 35, s. 12.

13. The Governor in Council may designate any person as an analyst for the purpose of this Act. 1960-61, c. 35, s. 13.

14. The Governor in Council may, from time to time, amend the schedule by adding thereto or deleting therefrom any substance, the inclusion or exclusion of which, as the case may be, is deemed necessary by him in the public interest. 1960-61, c. 35, s. 14.

*PART II

PREVENTIVE DETENTION AND CUSTODY FOR TREATMENT

**Note:* Part II (sections 15 to 19) comes into force on proclamation. (SOR/61-359)

Sentence of
preventive
detention

15. Where a person is convicted of an offence under section 4 or 5, the court shall, if that person

(a) has been previously convicted on at least one separate and independent occasion of an offence under section 4 or 5 of this Act or an offence under subsection 4(3) of chapter 201 of the Revised Statutes of Canada, 1952, or

(b) has been previously sentenced to preventive detention under this section,

impose a sentence of preventive detention in a penitentiary for an indeterminate period, in lieu of any other sentence that might be imposed for the offence of which he was convicted. 1960-61, c. 35, s. 15.

Remand for
observation and
examination

16. Where any person is charged with an offence under section 3, 4 or 5, the court or any judge having jurisdiction to try the offence may, upon application by counsel for the Crown, or upon application by the person charged with the offence or by counsel for such person, either before or after such person is committed for trial and before any sentence that might be imposed for the offence is passed, remand such person, by order in writing, to such custody as the court directs for observation and examination for a period not exceeding seven days. 1960-61, c. 35, s. 16.

Sentence to
custody for
treatment

17. (1) Where a person who has been remanded to custody for observation and examination pursuant to section 16 is convicted of the offence in respect of which he was remanded to such custody, the court shall, before passing sentence, consider the evidence arising out of the observation and examination, including the evidence of at least one duly qualified medical practitioner and such other

evidence as may be adduced, and where the court is satisfied, upon consideration of such evidence, that the convicted person is a narcotic addict, the court shall, notwithstanding anything in section 15, sentence him to custody for treatment for an indeterminate period, in lieu of any other sentence that might be imposed for the offence of which he was convicted.

Appeal

(2) A person who is sentenced to custody for treatment for an indeterminate period under this section may appeal to the court of appeal against the sentence on any ground of law or fact or mixed law and fact.

Application of
Criminal Code

(3) The provisions of section 695 of the *Criminal Code* with respect to appeals against a sentence of preventive detention apply *mutatis mutandis* to an appeal under this section. 1960-61, c. 35, s. 17.

Confinement
for treatment

18. (1) Where a person is sentenced to custody for treatment for an indeterminate period he shall be confined for treatment in an institution maintained and operated pursuant to the *Penitentiary Act*.

Application of
Parole Act

(2) A person who is sentenced to custody for treatment for an indeterminate period is subject to the *Parole Act* and, for all purposes of that Act, shall be deemed

(a) during his period of confinement to be an inmate within the meaning of that Act, and

(b) upon release under certificate of the Parole Board, to be a paroled inmate within the meaning of that Act.

Limitation

(3) A sentence of custody for treatment for an indeterminate period, where the person so sentenced has not, at any time before the conviction resulting in the sentence, been convicted of an offence under this Act or an offence under chapter 201 of the Revised Statutes of Canada, 1952, expires at the end of such period, not exceeding ten years from the date of his release under certificate of the Parole Board, as may be fixed by the Parole Board, unless before that time his parole is forfeited or revoked. 1960-61, c. 35, s. 18.

Agreement with
province

19. (1) Where the legislature of a province enacts legislation that is designed to provide custody for treatment for persons who, although not charged with the offence of possession of a narcotic, are narcotic addicts, the Minister may enter into an agreement with the province, subject to the approval of the Governor in Council, for the confinement and treatment of such persons in institutions maintained and operated pursuant to the *Penitentiary Act* and for the release and supervision of such persons pursuant to the *Parole Act*.

Idem

(2) A narcotic addict who is committed to custody for treatment pursuant to an Act of the legislature of a province shall be deemed, for the purposes of the *Penitentiary Act* and the *Parole Act*, to have been sentenced to custody for treatment under this Act. 1960-61, c. 35, s. 19.

SCHEDULE

1. Opium Poppy (*Papaver somniferum*) its preparations, derivatives, alkaloids and salts, including:

- (1) Opium,
- (2) Codeine (Methylmorphine),
- (3) Morphine,
- (4) Thebaine,

and their preparations, derivatives and salts, including:

- (5) Acetorphine,
- (6) Acetyldihydrocodeine,
- (7) Benzylmorphine,
- (8) Codoxime,
- (9) Desomorphine (dihydrodeoxymorphine),
- (10) Diacetylmorphine (heroin),
- (11) Dihydrocodeine,
- (12) Dihydromorphine,
- (13) Ethylmorphine,
- (14) Etorphine,
- (15) Hydrocodone (dihydrocodeinone),
- (16) Hydromorphone (dihydromorphinone),
- (17) Hydromorphinol (dihydro-14-hydroxymorphine),
- (18) Methyl-desorphine (Δ^6 -deoxy-6-methylmorphine),
- (19) Methyl-dihydromorphine (dihydro-6-methylmorphine),
- (20) Metopon (dihydromethylmorphinone),
- (21) Morphine-N-oxide (morphine-N-oxide),
- (22) Myrophine (benzylmorphine myristate),
- (23) Nalorphine (N-allylnormorphine),
- (24) Nicocodine (6-nicotinylcodeine),
- (25) Nicomorphine (dinicotinylmorphine),
- (26) Norcodeine,
- (27) Normorphine,
- (28) Oxycodone (dihydrohydroxycodeinone),
- (29) Oxymorphone (dihydrohydroxymorphinone),
- (30) Pholcodine (β -4-morpholinoethylmorphine), and
- (31) Thebacon (acetyldihydrocodeinone),

but not including:

- (32) Apomorphine,
- (33) Cyrenorphine,
- (33.1) Naloxone,
- (34) Narcotine,
- (35) Papaverine, and
- (36) Poppy seed.

2. Coca (*Erythroxylon*), its preparations, derivatives, alkaloids and salts, including:

- (1) Coca leaves,
- (2) Cocaine, and
- (3) Ecgonine (3-hydroxy-2-tropane carboxylic acid).

3. *Cannabis sativa*, its preparations, derivatives and similar synthetic preparations, including:

- (1) Cannabis resin,
- (2) Cannabis (marihuana),
- (3) Cannabidiol,
- (4) Cannabinol (3-n-amy-6,6,9-trimethyl-6-dibenzopyran-1-ol),
- (5) Pyrahexyl (3-n-hexyl-6,6,9-trimethyl-7,8,9,10-tetrahydro-6-dibenzopyran-1-ol), and
- (6) Tetrahydrocannabinol.

4. Phenylpiperidines, their preparations, intermediates, derivatives and salts, including:

- (1) Allyprodine (3-allyl-1-methyl-4-phenyl-4-piperidyl propionate),
- (2) Alphameprodine (α -3-ethyl-1-methyl-4-phenyl-4-piperidyl propionate),
- (3) Alphaprodine (α -1,3-dimethyl-4-phenyl-4-piperidyl propionate),
- (4) Anileridine (ethyl 1-[2-(p-aminophenyl) ethyl]-4-phenylpiperidine-4-carboxylate),
- (5) Betameprodine (β -3-ethyl-1-methyl-4-phenyl-4-piperidyl propionate),
- (6) Betaprodine (β -1,3-dimethyl-4-phenyl-4-piperidyl propionate),
- (7) Benzethidine (ethyl 1-(2-benzyloxyethyl)-4-phenylpiperidine-4-carboxylate),
- (8) Diphenoxylate (ethyl 1-(3-cyano-3,3-diphenylpropyl)-4-phenylpiperidine-4-carboxylate),
- (9) Etoxidine (ethyl 1-[2-(2-hydroxyethoxy) ethyl]-4-phenylpiperidine-4-carboxylate),
- (10) Fentanyl (1-phenylethyl-4-(phenylpropionylamino)-piperidine),
- (11) Furethidine (ethyl 1-(2-tetrahydrofurfuryloxyethyl)-4-phenylpiperidine-4-carboxylate),
- (12) Hydroxypethidine (ethyl 4-(m-hydroxyphenyl)-1-methyl-4-phenylpiperidine-4-carboxylate),
- (13) Ketobemidone (1-[4-(m-hydroxyphenyl)-1-methyl-4-piperidyl]-1-propanone),
- (14) Methylphenylisonipeconitrile (4-cyano-1-methyl-4-phenylpiperidine),

- (15) Morpheridine (ethyl 1-(2-morpholinoethyl)-4-phenylpiperidine-4-carboxylate),
- (16) Norpethidine (ethyl 4-phenylpiperidine-4-carboxylate),
- (17) Pethidine (ethyl 1-methyl-4-phenylpiperidine-4-carboxylate),
- (18) Phenoperidine (ethyl 1-(3-hydroxy-3-phenylpropyl)-4-phenylpiperidine-4-carboxylate),
- (19) Piminodine (ethyl 1-[3-(phenylamino)propyl]-4-phenylpiperidine-4-carboxylate),
- (20) Properidine (isopropyl 1-methyl-4-phenylpiperidine-4-carboxylate), and
- (21) Trimeperidine (1,2-5-trimethyl-4-phenyl-4-piperidyl propionate),

but not including:

- (22) Carbamethidine (ethyl 1-(2-carbamylethyl)-4-phenylpiperidine-4-carboxylate),
- (23) Oxpheneridine (ethyl 1-(2-hydroxy-2-phenylethyl)-4-phenylpiperidine-4-carboxylate).

5. Phenazepines, their preparations, derivatives and salts, including:

- (1) Proheptazine (hexahydro-1,3-dimethyl-4-phenyl-4-azepinyl propionate),

but not including:

- (2) Ethoheptazine (ethyl hexahydro-1-methyl-4-phenylazepine-4-carboxylate),
- (3) Metethoheptazine (ethyl hexahydro-1,3-dimethyl-4-phenylazepine-4-carboxylate), and
- (4) Metheptazine (ethyl hexahydro-1,2-dimethyl-4-phenylazepine-4-carboxylate).

6. Amidones, their preparations, intermediates, derivatives and salts, including:

- (1) Dimethylaminodiphenylbutanonitrile (4-cyano-2-dimethylamino-4,4-diphenyl butane),
- (2) Dipipanone (4,4-diphenyl-6-piperidino-3-heptanone),
- (3) Isomethadone (6-dimethylamino-5-methyl-4,4-diphenyl-3-hexanone),
- (4) Methadone (6-dimethylamino-4,4-diphenyl-3-heptanone),
- (5) Normethadone (6-dimethylamino-4,4-diphenyl-3-hexanone), and
- (6) Phenadoxone (6-morpholino-4,4-diphenyl-3-heptanone).

7. Methadols, their preparations, derivatives and salts, including:

- (1) Acetylmethadol (6-dimethylamino-4,4-diphenyl-3-heptanyl acetate),

- (2) Alphacetylmethadol (α -6-dimethylamino-4,4-diphenyl-3-heptanyl acetate),
- (3) Alphamethadol (α -6-dimethylamino-4,4-diphenyl-3-heptanol),
- (4) Betacetylmethadol (β -6-dimethylamino-4,4-diphenyl-3-heptanyl acetate),
- (5) Betamethadol (β -6-dimethylamino-4,4-diphenyl-3-heptanol),
- (6) Dimepheptanol (6-dimethylamino-4,4-diphenyl-3-heptanol), and
- (7) Noracymethadol (α -6-methylamino-4,4-diphenyl-3-heptanyl acetate).

8. Phenalkoxams, their preparations, derivatives and salts, including:

- (1) Dimenoxadol (dimethylaminoethyl 1-ethoxy-1,1-diphenylacetate),
- (2) Dioxaphetylbutyrate (ethyl 2,2-diphenyl-4-morpholino butyrate),

but not including:

- (3) Propoxyphene (4-dimethylamino-3-methyl-1,2-diphenyl-2-butyl propionate).

9. Thiambutenes, their preparations, derivatives and salts, including:

- (1) Diethylthiambutene (N,N-diethyl-1-methyl-3,3-di-2-thienylallylamine),
- (2) Dimethylthiambutene (N,N,1-trimethyl-3,3-di-2-thienylallylamine), and
- (3) Ethylmethylthiambutene (N-ethyl-N,1-dimethyl-3,3-di-2-thienylallylamine).

10. Moramides, their preparations, intermediates, derivatives and salts, including:

- (1) Dextromoramide (*d*-1-(3-methyl-4-morpholino-2,2-diphenylbutyryl) pyrrolidine),
- (2) Diphenylmorpholinoisovaleric acid (2-methyl-3-morpholino-1,1-diphenylpropionic acid),
- (3) Levomoramide (*l*-1-(3-methyl-4-morpholino-2,2-diphenylbutyryl) pyrrolidine), and
- (4) Racemoramide (*d,l*-1-(3-methyl-4-morpholino-2,2-diphenylbutyryl) pyrrolidine).

11. Morphinans, their preparations, derivatives and salts, including:

- (1) Levomethorphan (*l*-1,2,3,9,10,10a-hexahydro-6-methoxy-11-methyl-4H-10,4a-iminoethanophenanthrene),
- (2) Levorphanol (*l*-1,2,3,9,10,10a-hexahydro-11-methyl-4H-10,4a-iminoethanophenanthren-6-ol),

- (3) Levophenacymorphan (*l*-1,2,3,9,10,10a-hexahydro-11-phenacyl-4H-10,4a-iminoethanophenanthren-6-ol),
- (4) Norlevorphanol (*l*-1,2,3,9,10,10a-hexahydro-4H-10,4a-iminoethanophenanthren-6-ol),
- (5) Phenomorphan (*d,l*-1,2,3,9,10,10a-hexahydro-11-phenethyl-4H-10,4a-iminoethanophenanthren-6-ol),
- (6) Racemethorphan (*d,l*-1,2,3,9,10,10a-hexahydro-6-methoxy-11-methyl-4H-10,4a-iminoethanophenanthrene), and
- (7) Racemorphan (*d,l*-1,2,3,9,10,10a-hexahydro-11-methyl-4H-10,4a-iminoethanophenanthren-6-ol),

but not including:

- (8) Dextromethorphan (*d*-1,2,3,9,10,10a-hexahydro-6-methoxy-11-methyl-4H-10,4a-iminoethanophenanthrene),
- (9) Dextrorphan (*d*,1,2,3,9,10,10a-hexahydro-11-methyl-4H-10,4a-iminoethanophenanthren-6-ol),
- (10) Levallorphan (*l*-11-allyl-1,2,3,9,10,10a-hexahydro-4H-10,4a-iminoethanophenanthren-6-ol), and
- (11) Levargorphan (*l*-11-propargyl-1,2,3,9,10,10a-hexahydro-4H-10,4a-iminoethanophenanthren-6-ol),
- (12) Butorphanol and its salts.

12. Benzazocines, their preparations, derivatives and salts, including:

- (1) Phenazocine (1,2,3,4,5,6-hexahydro-6,11-dimethyl-3-phenethyl-2,6-methano-3-benzazocin-8-ol), and
- (2) Metazocine (1,2,3,4,5,6-hexahydro-3,6,11-trimethyl-2,6-methano-3-benzazocin-8-ol),

but not including:

- (3) Pentazocine (1,2,3,4,5,6-hexahydro-6,11-dimethyl-3-(3-methyl-2-butenyl)-2,6-methano-3-benzazocin-8-ol), and
- (4) Cyclazocine (1,2,3,4,5,6-hexahydro-6,11-dimethyl-3-(cyclopropylmethyl)-2,6-methano-3-benzazocin-8-ol).

13. Ampromides, their preparations, derivatives and salts, including:

- (1) Diampromide (N-[2-(methylphenethylamino)-propyl]-propionanilide),
- (2) Phenampromide (N-[2-(1-methyl-2-piperidyl)-ethyl]-propionanilide),
- (3) Propiram (N-(1-methyl-2-piperidinoethyl)-N-2-pyridylpropionamide).

14. Benzimidazoles, their preparations, derivatives and salts, including:

- (1) Clonitazene (2-(*p*-chlorobenzyl)-1-diethylaminoethyl-5-nitrobenzimidazole),
- (2) Etonitazene (2-(*p*-ethoxybenzyl)-1-diethylaminoethyl-5-nitrobenzimidazole).

15. Phencyclidine, its salts and derivatives.

R.S., c. N-1, Sch., SOR/71-226, (359); SI/73-48; SI/77-113.

4.

Table of Concordance

NARCOTICS ACT

Sections of the revised text	Sections of the present Act	Sections of the present Act	Sections of the revised text
1	2	1	Title
2	new	2	1
3	3	3	3
4	4(1) and (3)	4	4, 5
5	4(2) and (3)	5	6
6	5	6	7
7	6	7	12
8	12	8	13
9	12(f)	9	14, 15
10	13, 2	10	16 to 31
11	14	11	32 to 41
12	7	12	8 and 9
13	8	13	10
14	9(1) and (3)	14	11
15	9(2)	15	42, 43
16	10(1)(a)	16	42, 44, 45, 46
17	10(1)(a)	17	47, 48, 49
18	10(2)	18	50, 51
19	10(3)	19	52, 53
20	10(3)		
21	10(1)(b) and (c)		
22	10(4)		
23	10(5)		
24	10(5)		
25	10(6)		
26	10(6)		
27	10(7)		
28	10(8)		
29	10(9)		
30	10(9)		

Sections of the revised text	Sections of the present Act	Sections of the present Act	Sections of the revised text
31	10(9)		
32	11(1)		
33	11(7)		
34	11(2)		
35	11(4)		
36	11(4)		
37	11(5) and (6)		
38	11(5)		
39	11(7)		
40	11(5)		
41	11(6)		
42	Title, Part II, 15 and 16		
43	15		
44	16		
45	16		
46	16		
47	17(1)		
48	17(2)		
49	17(3)		
50	18(1) and (2)		
51	18(3)		
52	19(2)		
53	19(1)		

Revised Text and Explanatory Notes

NARCOTICS ACT

Preliminary Remarks

The remarks presented at the beginning of the preceding chapter apply equally here. Once again, the new structure of the statute emerges clearly from the reading of the table of contents. The revised text reproduces the legislative substance of the present Act. The numerous internal references to other statutes have disappeared. The proposed statute is now made up of fifty-three short sections, each containing no more than one idea.

Unless otherwise stated, the explanatory notes follow the order of the new sections.

Title

The first section of the present Act has been eliminated. Usage has largely stripped the British tradition of having a long and short title of its functional aspect, and it no longer seems necessary to keep both forms.

CHAPITRE PREMIER

INTERPRÉTATION

Définitions

«faire le
trafic»
“traffic or
trafficking

1. Dans la présente loi, on entend
par

«faire le trafic»

le fait de fabriquer, vendre, donner,
administrer, transporter, expédier,
livrer ou distribuer un stupéfiant, ou
encore d'offrir de le faire,

«personne qui
s'adonne aux
stupéfiants»
“narcotic
addict”

«possession»
“possession”

«stupéfiant»
“narcotic”

«personne qui s'adonne aux stupéfiants»
une personne qui, par suite de
l'usage de stupéfiants, connaît un
assujettissement psychologique ou
physique à un stupéfiant,

«possession»
la possession au sens du *Code
criminel*,

«stupéfiant»
une substance mentionnée à l'annexe
ou un produit qui contient de cette
substance.

CHAPTER ONE

INTERPRETATION

Definitions

“narcotic”
«stupéfiant»

“narcotic addict”
«personne qui
s'adonne aux
stupéfiants»

“possession”
«possession»

“traffic or
trafficking”
«faire le
trafic»

1. In this Act,

(a) “narcotic” means any substance
included in the schedule or anything
that contains that substance;

(b) “narcotic addict” means a per-
son who has developed a psycho-
logical or physical dependence on a
narcotic;

(c) “possession” means posses-
sion as defined in the *Criminal Code*;

(d) “traffic or trafficking” means
manufacturing, selling, giving, ad-
ministering, transporting, sending,
delivering, distributing a narcotic or
offering to do so.

The first section of the draft partially restates the existing interpreta-
tive provisions by amending them appreciably. We have eliminated
the two terms «désigner» (to mean) and «comprendre» (to include),
replacing them by: «dans la présente loi, on entend par . . . » (In this
Act, . . . means . . .).

The following definitions have been eliminated.

«analyste»

“*analyst*”

Because the word is very seldom used, we have integrated the definition into section 10, which authorizes the appointment of an analyst.

«chanvre indien» ou «marihuana», «pavot somnifère»

“*marihuana*”, “*opium poppy*”

These words appear only rarely, therefore it does not seem necessary to define them in a special interpretative provision but simply, whenever required, to specify the terms by adding their Latin botanical name. The schedule to the present Act is, moreover, misleading in this regard. Indeed, the Latin name “*Cannabis sativa*” mentioned in the schedule does not cover the expression «chanvre indien» (“marihuana”) as is the case in the text. Furthermore, the text translates “*Papaver somniferum*” by «pavot somnifère» (“Opium poppy”), while in the schedule it is translated by «pavot à opium» (“Opium poppy”).

Obviously, as a result of using Latin botanical names, the statute is aimed at a restricted public. To a certain degree this is inevitable; in ordinary circumstances, however, Latin references should be limited to a strict minimum.

«Ministre»

“*Minister*”

Since only two Ministers are involved, the appropriate Minister is identified each time, thus eliminating all possible confusion.

«moyen de transport»

“*conveyance*”

This definition is nonsensical and should be eliminated, even if it is a symbol of a case-law that did not hesitate to brave ridicule in refusing to recognize as a conveyance motorized vehicles travelling by land, air or sea.

We have retained the other interpretative provisions, while occasionally amending them.

«personne adonnée aux stupéfiants»
“*narcotic addict*”

The definition in the draft covers the same ground as that of the definition in the present Act.

In our opinion, it is regrettable that the expression used cannot be advantageously replaced by a single term, «narcomane» (literally, drug addict), which corresponds fairly well to the meaning of the text. By way of example, here is the definition that the LEXIS dictionary gives of «narcomanie» (i.e. drug addiction): «penchant morbide pour les narcotiques» (i.e. morbid penchant for narcotics).

«trafiquer» ou «faire le trafic»
“*traffic*” or “*trafficking*”

Here we have an extensive definition that we have scarcely retouched. Because we wanted to adhere as closely as possible to the meaning of the original text, we were forced to retain it. It is certain, however, that if the object of our project had been true substantive reform, we would not have resorted to the expedient of this definition. We would, indeed, have preferred to air the details of this definition in the relevant provisions. Furthermore, it should be noted that the expression «offrir de faire» (“to offer to do”) has a double meaning. It can mean «offrir ses services» (in English, literally, to offer one’s services) for something or other, or equally «proposer à un tiers de faire lui-même quelque chose» (meaning, to propose to a third party that he do something himself). We have not been able to remove this ambiguity.

On numerous occasions, the impoverished French vocabulary, when compared with the English vocabulary used, presented certain drafting difficulties, which would not have hindered our task had we not had to take into account the English text. We have already mentioned the clumsiness of the expression «personne adonnée aux stupéfiants»; we should also contrast the meagreness of that expression when juxtaposed to the term «assujettissement» with the relative elegance of the English terms “*narcotic addict*” and “*dependence*”.

Farther on in the text, there seems to be a disparity between the English and French versions with regard to the terms «faire le négoce» (“to deal”) and «faire le trafic» (“to traffic”). At first glance, the English text seems ambiguous as to the possible interpretations of the

verb "to deal". Indeed, in the French text the verb "to deal" has two meanings, that of «manier» (to handle) or «manipuler» (to handle) ("persons who deal in narcotics as authorized by this Act . . .", paragraph 12(d)) and that of «vendre, faire le commerce de» (to sell, to trade) ("the sale or possession of or other dealing in narcotics . . .", paragraph 12(c)). The French language resorts to two expressions to stress these nuances. However, in the present French version one reads «faire le négoce» wherever the English has "to deal"; this constitutes a loss in French.

The words "traffic" and «trafic» present another curious example of the pitfalls in translation. The connotation of the English term "traffic" is not necessarily pejorative, whence the need to specify in an interpretative definition exactly what the legislator means by "to traffic". However, since the French text closely follows the English original, the exhaustive definition is a servile copy of the original text. But let us beware! If the English definition is fully justified, that of «faire le trafic» in French is useless, since this expression means, in the first place, prohibited commerce . . .

CHAPITRE DEUXIÈME

OBJET DE LA LOI

Objet

2. La présente loi a pour objet, d'une part, l'interdiction de la possession, du trafic, de la possession en vue de faire le trafic, de l'importation, de l'exportation et de la culture d'un stupéfiant et, d'autre part, l'autorisation de certaines exceptions à cette interdiction.

CHAPTER TWO

OBJECT OF THE ACT

Object

2. The object of this Act is twofold: first, to prohibit possession of a narcotic, trafficking in narcotics, possession of a narcotic for purposes of trafficking, importing, exporting and cultivating a narcotic; and second, to provide for certain exceptions to such prohibition.

This section is new and its purpose is evident, that is, to give in a nutshell the object of the Act. Moreover, we believe that as a general rule, every statute should include a section describing its object. Thus, from the beginning of the statute, the reader knows what is the intention of the legislator; it is in accordance with this object that possible differences in interpretation will be settled.

CHAPITRE TROISIÈME

INFRACTIONS ET PEINES

Possession
d'un
stupéfiant

3. La possession d'un stupéfiant, sauf exception prévue par la présente loi ou par les règlements, est une infraction qui expose son auteur à une condamnation sur poursuite, sur déclaration sommaire de culpabilité ou sur déclaration de culpabilité sur un acte d'accusation.

Dans le premier cas, s'il s'agit d'une première infraction, l'auteur s'expose à une amende de mille dollars, à un emprisonnement de six mois, ou aux deux à la fois. En cas de récidive, il s'expose à une amende de deux mille dollars, à un emprisonnement d'un an ou aux deux à la fois.

Dans le second cas, l'auteur s'expose à un emprisonnement de sept ans.

CHAPTER THREE

OFFENCES AND PENALTIES

Possession
of a
narcotic

3. No person shall possess a narcotic except as authorized by this Act or the regulations. The offender is liable to a penalty upon summary conviction or conviction on indictment.

If convicted summarily, the offender is liable to a fine of one thousand dollars or imprisonment for six months or both.

For a subsequent offence, the offender is liable to a fine of two thousand dollars or imprisonment for one year or both.

If convicted on indictment, the offender is liable to imprisonment for seven years.

This section is the result of a new formulation of section 3 of the present Act.

Unlike the anglophone legislator who is concerned with presenting the actor (No person shall . . .), we wanted to focus firstly on the action («La possession . . .», i.e. possession) and subsequently link it to the author («son auteur . . .»). This change serves to underline a central principle according to which possession is forbidden. The tone of the original Act is that of repression and it is well preserved by acknowledging that principle. This method of drafting in French is common and is expected by francophones. The anglophone insists on mentioning the person who has committed the offence first while the French language assumes that possession is inconceivable without a possessor. The words «possession-possesseur» (possession-possessor), and «propriété-propiétaire» (property-owner) as well as their relationships are clear.

Moreover, the new formulation of the section in the present Act raises the fundamental and thorny problem of the lack of a terminology in Canadian criminal law that is truly French and that belongs to the common vocabulary of the French language. It is not our intention to embark upon a discussion of such a vast subject in these few pages; rather, it suffices to acknowledge the existence of another deficiency in the present system.

Finally, in comparing the present Act to the one we propose, it is to be noted that the order in which the ideas are presented is no longer the same because the new punctuation is now more consistent with the French language.

Trafic d'un
stupéfiant

4. Le trafic d'un stupéfiant, sauf exception prévue par la présente loi ou par les règlements, est un acte criminel qui expose son auteur à l'emprisonnement à perpétuité.

Est assimilée à un stupéfiant aux fins du présent article, toute substance que le trafiquant prétend ou estime être tel.

Trafficking
a narcotic

4. No person shall traffic in a narcotic except as authorized by this Act or the regulations. The offender is liable to imprisonment for life.

For the purposes of this section a narcotic includes any substance which the trafficker claims or believes to be a narcotic.

Same remarks as for section 3. It should be noted as well that we have devoted two sentences to the idea expressed in subsection 4(1) of the present Act. One sentence sets apart the main idea, the other states a modality, a detail.

Possession
en vue du trafic
d'un stupéfiant

5. La possession d'un stupéfiant en vue d'en faire le trafic, sauf exception prévue par la présente loi ou par les règlements, est un acte criminel qui expose son auteur à l'emprisonnement à perpétuité.

Possession
for purposes
of trafficking

5. No person shall possess a narcotic for the purposes of trafficking except as authorized by this Act or the regulations. The offender is liable to imprisonment for life.

We wanted to individualize, to set apart, the idea that possession for the purposes of trafficking should not fall under the same sanction as that for simple possession. By making this act the object of a particular section, we stress this difference. The clarity, and thus the comprehension of the statute, is simplified accordingly.

Importation
ou
exportation
d'un
stupéfiant

6. L'importation ou l'exportation d'un stupéfiant, sauf exception prévue par la présente loi ou par les règlements, est un acte criminel qui expose son auteur à l'emprisonnement à perpétuité ou, à tout le moins, à un emprisonnement de sept ans.

Importing
or exporting
a narcotic

6. No person shall import or export a narcotic except as authorized by this Act or the regulations. The offender is liable to imprisonment for life or a minimum of seven years.

A reorganization of the original statement found in subsection 5(1) of the present Act allows us to put in perspective the nature of the prohibition.

There is no need to mention the country here.

Culture
du pavot
somnifère ou
du chanvre
indien

7. La culture du pavot somnifère (*papaver somniferum* L.) ou du chanvre indien (*cannabis sativa* L.), sauf en conformité d'un permis délivré en vertu des règlements, est un acte criminel qui expose son auteur à un emprisonnement de sept ans.

Le ministre de la Santé et du Bien-être social peut ordonner la destruction des plantes de pavot somnifère (*papaver somniferum* L.) ou de chanvre indien (*cannabis sativa* L.) cultivées sans permis ou en violation d'un permis.

Cultivating
opium poppy
or marihuana

7. No person shall cultivate opium poppy (*Papaver somniferum* L.) or marihuana (*Cannabis sativa* L.) except in accordance with a licence issued under the regulations. The offender is liable to imprisonment for seven years.

The Minister of Health and Welfare may cause to be destroyed any plant of opium poppy (*Papaver somniferum* L.) or marihuana (*Cannabis sativa* L.) cultivated without a licence or in violation of the terms of a licence.

Same transformation as for the preceding sections: the principle is stated first, followed by the conditions.

The Latin is tolerable here since it allows the user of the statute, thanks to the botanical names, to clearly identify the plants and products, without having recourse to innovative translations.

Although the second paragraph does not make provision for conviction through judicial channels, it still appears in the statute because we have assimilated this administrative measure to a penalty, for it certainly constitutes a civil penalty.

CHAPITRE QUATRIÈME

RÉGLEMENTATION

Règlements
d'application
de la loi

8. Le gouverneur en conseil peut, par règlement, prendre les mesures permettant la réalisation de l'objet de la présente loi et l'application de ses dispositions. Il peut notamment

a) pourvoir à la délivrance, à la suspension et à l'annulation de permis d'importation, d'exportation, de vente, de production ou de distribution d'un stupéfiant et, dans le cas du chanvre indien (*cannabis sativa* L.) ou du pavot somnifère (*papaver somniferum* L.), d'un permis de culture,

b) prescrire la forme, la durée et les modalités de ces permis, notamment les droits exigibles,

c) autoriser des personnes à posséder et à faire le commerce d'un stupéfiant et en prescrire les conditions,

d) autoriser la communication des renseignements, obtenus en vertu de la présente loi ou des règlements, aux autorités provinciales chargées de délivrer les permis visés au présent article.

CHAPTER FOUR

REGULATIONS

Regulations

8. The Governor in Council may make regulations to carry out the object and provisions of this Act. He may, in particular,

(a) provide for the issuance, suspension or cancellation of licences for importing, exporting, selling, producing or distributing a narcotic as well as cultivating opium poppy (*Papaver somniferum* L.) or marihuana (*Cannabis sativa* L.);

(b) prescribe the form, duration, terms and conditions, including fees, of such licences;

(c) authorize persons to possess or sell a narcotic and prescribe conditions for such possession or sale; and

(d) authorize communication of any information obtained under this Act or the regulations to provincial authorities empowered to deliver licences under this section.

We have considerably modified the formulation of this section which is a reorganization of the substance of section 12 of the present Act.

We have avoided dividing paragraph (a) into subparagraphs (i) and (ii).

Paragraph (d) of the present Act has shrunk.

We have eliminated the translation of “therefor” («à cet égard», paragraph b)) since it is useless in French. The new paragraph (c) groups together the second part of paragraphs (c) and (d) of the present Act. We chose to restate these ideas in more general terms. Indeed, the details contained in the present Act are not always clear, and moreover are now covered by the expression «et en prescrire les conditions» (and prescribe conditions for such possession or sale).

In paragraph (d), we have eliminated the word «officiellement» (literally, officially) since it is unnecessary.

Paragraph (f) of the present Act included enough distinctive attributes for us to make it a section unto itself. It has become section 9 of the draft Act.

Paragraph (g) of the present Act, which we had to leave in the draft, our mandate being to copy the legal contents of the original and to clean up its form, remains of questionable value. Indeed, from the normative point of view, it would be sufficient to empower the Governor in Council to do what the preceding paragraphs mention.

We challenge the formula that consists in ending an enumeration by a provision in the form of an “etc.” . . . It would be more acceptable to transform paragraph (g) into an introductory paragraph and to introduce the series of other paragraphs by a «notamment» (in particular), a technique which should not, however, be abused. This is the structure that we have used in section 8 of the draft Act.

Réglementation
des infractions
aux règlements

9. Le gouverneur en conseil peut, par règlement, prescrire une amende maximale de cinq cents dollars, un emprisonnement maximal de six mois, ou les deux à la fois, pour infraction aux règlements.

Cette sanction est prise sur déclaration sommaire de culpabilité.

Penalties
for breach
of regulations

9. The Governor in Council may, by regulation, prescribe a maximum fine of five hundred dollars or a maximum imprisonment of six months or both for breach of any regulation.

This sentence shall be imposed upon summary conviction.

The draft section has developed from paragraph 12(f) of the present Act. We have divided the original text into two distinct sentences.

As a matter of principle, it would be preferable to legislate directly in respect of offences and penalties, rather than leaving to the executive the power to decree offences and penalties by way of delegated legislation.

Nomination
d'un analyste

10. Le gouverneur en conseil peut nommer un analyste aux fins de la présente loi.

Un analyste nommé en vertu de la *Loi des aliments et drogues* est un analyste aux fins de la présente loi.

Appointment
of analyst

10. The Governor in Council may appoint an analyst for the purposes of this Act.

A person appointed as an analyst under the *Food and Drugs Act* is an analyst for the purposes of this Act.

The revised text clearly indicates that the analyst is recognized as such following an appointment authorized under this Act or the *Food and Drugs Act*. Moreover, by combining section 13 and the definition of the word "analyst" in section 2 of the present Act, the reader is no longer forced to refer to what he has read or to call upon his memory to remember what was said earlier in the text.

Modification
à l'annexe

11. Le gouverneur en conseil peut, s'il l'estime nécessaire dans l'intérêt public, modifier l'annexe.

11. The Governor in Council may amend the schedule if he deems it necessary in the public interest.

This draft conforms to section 14 of the present Act. There is reason to ask if it would not have been preferable, at least if only from the point of view of drafting, to subject this power, delegated by the Act to the Governor in Council, to that of making regulations. Thus, this section would have become another paragraph of section 8 of the revised text.

We have eliminated the expression «à l'occasion» ("from time to time"), since it is superfluous in French.

Undoubtedly, the English expression if he deems it necessary and its variants, confer a discretionary element to a power by virtue of the rules of interpretation of the English text. However, the French language does not need this key; in French, for a power to be discretionary, it must simply not be modified in any way. The principle according to which the power is exercised only when its holder considers it necessary is thus invoked.

Finally, the term «modifier» (amend) conveys, by deduction, all the details mentioned at the end of section 14 of the present Act. Conversely, the question might also be raised whether the power to amend is limited to adding an item to, or removing it from the list. If, for some extraordinary reasons, a list could be amended other than by removing or adding an item, the solution would be simply not to refer to the idea of amendment at all, but rather to state that the Governor in Council may only strike an item from, or add one to the list.

CHAPITRE CINQUIÈME

PROCÉDURE

Procédure judiciaire

Fardeau
de la preuve

12. Dans une poursuite sous le régime de la présente loi, ou des articles 421, 422 ou 423 du *Code criminel*, pour autant qu'ils s'appliquent à une infraction à la présente loi, il incombe à l'accusé de prouver qu'une exception,

exemption, excuse ou réserve prévue par la loi joue en sa faveur.

Le ministère public n'est pas tenu, sauf à titre de réfutation, de prouver que l'exception, l'exemption, l'excuse ou la réserve en question ne joue pas en faveur de l'accusé.

CHAPTER FIVE

PROCEDURE

Judicial Procedure

Burden of
proof

12. In any prosecution under this Act or section 421, 422 or 423 of the *Criminal Code* as they apply to an offence under this Act, the accused has the burden of providing that an exception, exemption, excuse or qualification prescribed by law operates in his favour.

At no time in the proceedings is the prosecutor required, except by way of rebuttal, to prove that an exception, exemption, excuse or qualification does not operate in favour of the accused.

We have rewritten section 7 of the present Act so as to simplify it, particularly by improving the punctuation and by using the active voice in preference to the passive.

Poursuite
pour
possession en
vue du trafic

13. Si dans une poursuite pour possession d'un stupéfiant en vue d'en faire le trafic, l'accusé plaide non coupable, l'instruction du procès se déroule comme s'il s'agissait d'une poursuite pour possession d'un stupéfiant.

La cour détermine si l'accusé était en possession d'un stupéfiant, après l'exposition de la preuve du ministère public et après que l'accusé ait eu

l'occasion de présenter sa réplique et sa défense. Dans la négative, la cour acquitte l'accusé.

Dans l'affirmative, la cour fournit à l'accusé l'occasion de démontrer que son intention n'était pas de faire le trafic d'un stupéfiant et au ministère public l'occasion de faire la preuve contraire. Si l'accusé démontre qu'il n'avait pas l'intention de faire le trafic d'un stupéfiant, il est acquitté de cette accusation et est déclaré coupable de possession d'un stupéfiant.

Prosecution
for
trafficking

13. When the accused pleads not guilty to an offence of possession of a narcotic for the purposes of trafficking, the trial proceeds as if the charge was for the offence of possession of a narcotic.

After the close of the case for the prosecution and after the accused has had an opportunity to present his rebuttal and defence, the court shall determine whether or not the accused was in possession of a narcotic. If the accused is found not to have been in possession, the court shall acquit him.

If the accused is found to have been in possession, the court shall first allow the accused an opportunity to establish that he was not in possession of the narcotic for the purposes of trafficking and second allow the prosecutor to establish the opposite. If it is found that the accused did not intend to traffic in narcotics, the court shall acquit him of the charge of possession for the purposes of trafficking and shall find him guilty of the offence of possession of a narcotic.

Several amendments have been made.

It seemed preferable to begin by stating the circumstances which bring about the application of the principle: «Si . . . l'accusé plaide non coupable . . .» (When the accused pleads not guilty . . .).

We avoided cross-referencing, by recalling in a few words what was said above in section 5 of the draft.

The defective punctuation of the original section has been corrected, particularly by adding several periods.

We are still not convinced that the English tendency to use *doublets* should be imitated by translating “full answer and defence” by «une réplique et une défense complètes». Benefit of the doubt was given in the original draft; however, by using *sa réplique et sa défense* (his rebuttal and defence) the adjective «complètes» (“full”) is no longer necessary.

We wanted to clarify the steps involved by devoting at least one sentence to each of the different hypothetical alternatives. To understand the steps as described in the present Act required about three readings or a diagram. In fact, the last five lines of section 8 of the present Act are unnecessary, for they set forth an hypothesis whose solution is self-evident. And what of the double negative, which gives this provision a rather strange appearance?

Certificat de
l'analyste:
preuve
recevable

14. Le certificat d'un analyste attestant qu'il a analysé ou examiné une substance et énonçant le résultat de l'analyse ou de l'examen, est une preuve recevable dans une poursuite pour infraction à la présente loi ou aux articles 421, 422 et 423 du *Code criminel*.

En l'absence de preuve contraire, ce certificat constitue une preuve des déclarations qu'il contient, sans qu'il soit nécessaire d'établir la qualité d'analyste du signataire ni l'authenticité de sa signature.

Pour que le certificat soit recevable, la partie qui désire le produire avertit de son intention la partie adverse et lui communique copie du certificat, le tout suffisamment tôt avant le procès.

14. A certificate of an analyst stipulating that he has analysed or examined a substance and stating his findings is admissible evidence in any prosecution for an offence under this Act or under section 421, 422 or 423 of the *Criminal Code*.

In the absence of evidence to the contrary, the certificate is proof of the statements contained therein and no proof is needed regarding either the qualification or the signature of the analyst.

The party intending to use a certificate shall, for the certificate to be admissible, notify the other party of its intention and give him a copy of the certificate within reasonable time before the trial.

The reservation stated at the beginning of section 9 of the present Act now appears in the third paragraph of section 14 of the proposed Act. The reservation is thus clearer because easier to locate.

Shorter sentences allow us to follow with greater ease the legislator's thought processes.

The cross-reference to subsection 7(1) in the present Act is unnecessary, since only one certificate is mentioned in the Act.

Because the expression «avis raisonnable» ("reasonable notice") seemed obscure, we preferred to request that the party give notice of its intention «suffisamment tôt» (within reasonable time) before the trial. In the same way, because the words «qualité officielle» ("official character" [capacity]) seemed abstruse to us, we have replaced them by «qualité d'analyste» (qualification . . . of the analyst).

We have eliminated the expression «recevable en preuve» ("admissible in evidence"), which is a literal translation of the English "(to) be received in evidence", keeping only the idea of admissibility. Indeed, on the one hand, we have noted that the terms "to be admissible, to receive" and «recevoir» (to receive) vary according to the context. On the other hand, the substantivized concept of «recevabilité» in

French is not expressed in English in the same lexical (admissibility) or grammatical (admissible evidence) form; this may explain why at times, and this does not apply only to the present case, English uses a nominal syntagm where French uses the substantive. This is why the original English text speaks of “shall be received in evidence” and the proposed French text is satisfied with a single word «recevable» (admissible).

Finally, it seems that the word «preuve» (proof) is not used here in its restricted sense of «fait qui prouve» (a fact which establishes), but in its broader sense of “evidence”, meaning a phase in the procedure: the presentation of evidence. In fact, the analyst’s certificate would seem to have no usefulness if it were not incorporated «à la preuve» (to the evidence). This is why it suffices, in our opinion, to say that it is «recevable» (admissible).

Contre-
interrogatoire
de l’analyste

15. La partie contre laquelle le certificat d’analyse est produit peut, avec la permission de la cour, exiger la présence de l’analyste qui en est l’auteur aux fins de contre-interrogatoire.

Cross-
examination
of analyst

15. The party against whom a certificate of an analyst is produced may, with leave of the court, require the attendance of the analyst who prepared the certificate for the purposes of cross-examination.

Subsection 9(2) of the present Act seems to us to be of a sufficiently distinct character to make it a separate section.

The words «en conformité du paragraphe (1)» (“pursuant to subsection (1)”) do not correspond to anything in subsection 9(1) of the present Act, since this subsection does not mention any condition dealing with the form of the certificate. Unless, by some dubious acrobatic feat, we assume that because of the reservation that appears at the beginning of section 9 of the present Act, the conditions of form expressed in 9(2) require that, to conform to 9(1), it must also be necessary to conform to 9(3) . . . Aside from this rather hazy hypothesis, the expression «en conformité» (“pursuant to”) makes no sense.

Perquisitions et saisies

Perquisition
sans mandat

16. Un agent de la paix, s'il a raison de croire à la présence d'un stupéfiant relié à une infraction à la présente loi, peut perquisitionner sans mandat, sauf dans une maison d'habitation.

Search and Seizure

Search
without
warrant

16. A peace officer may, without a warrant, search any place, except a dwelling-house, in which he reasonably believes there is a narcotic related to an offence under this Act.

Section 10 of the present Act gave us enough material to make sixteen sections.

We assumed that to search there must be reason to believe that a narcotic is present. Paragraph 10(1)(a) of the present Act imposes this condition but only for searches in a dwelling-house, which would imply that one may search elsewhere pursuant to the *Narcotic Control Act* without suspecting the presence of a narcotic. Indeed, the antecedent of the relative pronoun «où» ('in which') is the term «maison d'habitation» ('dwelling-house') and not the word «endroit» ('place') which appears several lines before. This hypothesis seemed weak to us, and we concluded that there was a defect in drafting.

The verb «entrer» ('enter') in paragraph 10(1)(a) is useless in French. For, without abusing Cartesianism, to search in a place one must previously have entered there. Moreover, "to enter and search" is more faithfully rendered, we believe, by «entrer *pour* perquisitionner» (literally, enter in order to search). It appears that the translator has to a great extent copied the original, thus producing a text that is not idiomatic. We consider that the power to search bears with it the power to enter the place to be searched. Whence our draft provisions.

Perquisition
avec mandat

17. Pour perquisitionner dans une maison d'habitation, il faut, d'une part, que l'agent de la paix ait raison de croire à la présence d'un stupéfiant relié à une infraction à la présente loi, et, d'autre

part, qu'il détienne un mandat de main-forte ou un mandat de perquisition délivré à cet effet, en vertu du présent article.

Warrant
to search
a dwelling-
house

17. To search a dwelling-house requires first, that the peace officer has reason to believe that there is in the dwelling-house a narcotic related to an offence under this Act and second, that he possesses a writ of assistance or a search warrant issued for that purpose under this Act.

Our draft, as well as individualizing the ideas, re-establishes their logical sequence. «Pour perquisitionner . . . il faut d'une part . . . , d'autre part . . . » (To search . . . requires first, . . . and second, . . .). The conditions appear with more clarity.

Mandat de
perquisition

18. Un juge de paix convaincu, à la suite d'une déclaration sous serment, qu'il y a raison de croire à la présence, dans une maison d'habitation, d'un stupéfiant relié à une infraction à la présente loi, délivre un mandat de perquisition afin d'y chercher le stupéfiant.

Ce mandat est revêtu de la signature du juge de paix et nomme l'agent de la paix qu'il habilite.

Search
warrant

18. A justice of the peace who is satisfied by information provided under oath that there are reasonable grounds for believing that in a dwelling-house there is a narcotic related to an offence under this Act, shall issue a search warrant authorizing to search therein for such narcotic.

The warrant shall be signed by the justice of the peace and shall designate the peace officer so authorized.

Many words that we considered unnecessary have disappeared: «à l'égard duquel» ("in respect of which"), «quelconque» ("any"), «à toute heure» ("at any time"), «pour découvrir des stupéfiants» ("to . . . search for narcotics"), etc.

The power conferred on the judge by the verb «peut» ("may") certainly does not give him the authority not to issue a warrant. This is what we refer to as a «compétence liée» (self-binding authority or self-binding powers). Thus it holds true that «peut» ("may") is here a source of ambiguity that leads one to believe that the judge's conviction is not the only criterion that comes to bear on his decision. The new draft uses a present indicative of an imperative nature, making the issuance of the warrant the logical and "actualized" consequence of the judge's conviction.

A separate paragraph has been devoted to the formal elements of the warrant.

Mandat de
main-forte

19. Un juge de la Cour fédérale du Canada délivre, à la demande du ministre de la Santé et du Bien-être social, un mandat de main-forte pour perquisitionner à toute heure dans une maison d'habitation afin d'y chercher un stupéfiant.

Le mandat nomme la personne habilitée.

Writ of
assistance

19. A judge of the Federal Court of Canada shall, upon application by the Minister of Health and Welfare, issue a writ of assistance authorizing a person designated therein to search at any time a dwelling-house for narcotics.

The warrant shall designate the person so authorized.

Here again, the section is divided up, and the two formalities are now expressed in two paragraphs.

We have abandoned the concepts of «autorisation» (“authorizing”) and «habilitation» (“empowering”), since we were unable to conceive of a mandate . . . without a mandate. And again we adopt the same style — the present indicative of an imperative nature.

The signature that is called for in section 18 of the draft Act (subsection 10(2) of the present Act) is not required here since the present Act (subsection 10(3)) makes no mention of it.

Assistance
nécessaire

20. La personne habilitée par le mandat de main-forte peut réquisitionner les services d’une autre personne pour la perquisition.

Necessary
assistance

20. The person authorized to search by a writ of assistance may demand the aid of another person.

This is a remainder of subsection 10(3) of the present Act and it constitutes a separate idea.

Fouille
et saisie

21. L’agent de la paix peut, dans le lieu qu’il perquisitionne, saisir, d’une part, un stupéfiant ou un objet qui, selon ses soupçons, contient ou cache un stupéfiant et, d’autre part, un objet qui, d’après ce qu’il a raison de croire, est relié à une infraction à la présente loi, ou peut servir à prouver une infraction à la présente loi.

La perquisition du lieu inclut la fouille d’une personne qui s’y trouve.

Search
and
seizure

21. The peace officer may, during the search of any place, seize, first, any narcotic or object which he suspects contains or hides a narcotic and, second, anything which he suspects is related to an offence under this Act or may provide evidence of an offence under this Act.

Authority to search a place includes authority to search any person found in such a place.

This text reflects paragraphs (b) and (c) of subsection 10(1) of the present Act. We have dissociated this part of the text from section 17 of the draft Act, the better to underline the logical sequence of ideas, that is to say, by separating the cause from its effects.

The expression «un semblable endroit» (“such place”) in paragraph 10(1)(b) of the present Act is ambiguous. It is not known to which of the two places mentioned in paragraph 10(1)(a), paragraph (b) makes reference. We have resolved what appeared to us to be a purely fortuitous ambiguity by resorting to the expressions «lieu qu’il perquisitionne» (search of any place or literally, the place which he is searching) and «perquisition du lieu» (to search a place or literally, a search of the place).

Usage de
la force

22. Dans l’exercice de ses pouvoirs de perquisition, un agent de la paix peut, avec l’assistance qu’il estime nécessaire, forcer le lieu perquisitionné et démonter ou défoncer ce qui s’y trouve.

Use of
force

22. In exercising his authority to search, the peace officer may, with such assistance as he deems necessary, forcefully enter the place to be searched and take apart or break into anything therein.

The wording of subsection 10(4) of the present Act poses a serious problem. Indeed, it seems at first to provide for different degrees of intervention according to the nature of the elements that make up the dwelling-house. Thus, we read that, in general, one may «forcer» (“break open”) any movable fastening (door, window, lock, fastener), «enfoncer» (“break open”) the fixed elements (floor, wall, ceiling, compartment), and «briser» (“break open”) anything that might serve as a container . . . or any other thing.

It seems that the classification adopted in the French text is the result of an attempt by a translator turned legislator in spite of himself, to

air out all the quasi-synonyms proposed by Harrap's Dictionary for the verb "to break open". In the translator's defence, we have to admit that the English verb is as ambiguous as could be. The whole gamut of demolition parades by one by one . . . The present version of this section defies common sense for it is obvious that the legislator does not intend to authorize a peace officer to deliberately destroy a dwelling.

Under the new section, the officer responsible for the search is authorized to adapt the force and scope of his intervention according to what he considers necessary.

Restitution de l'objet saisi

Demande de
restitution

23. L'objet saisi peut être réclamé au moyen d'une demande de restitution auprès d'un magistrat compétent dans le territoire où la saisie a eu lieu.

Return of Seized Objects

Application
for
restoration

23. A person whose object has been seized may apply to a magistrate of the territorial jurisdiction where the seizure was made for an order of restoration.

In this section and the following ones, we have tried to classify all the hypothetical alternatives contained in subsections 10(5) and 10(6), while at the same time giving each statement a syntactical autonomy to help the reader discover, even by a rapid reading, the solution to his problem.

Demande
recevable

24. La demande de restitution est recevable si, d'une part, l'objet saisi n'est pas frappé d'une ordonnance de confiscation et si, d'autre part, le demandeur la présente dans les deux mois de la saisie, en avise le ministère public au préalable de la manière prescrite par les règlements, et établit son droit à la possession de l'objet saisi.

Admissible
application

24. For an application of restoration to be admissible, first, the object seized shall not have been forfeited and, second, the applicant shall make his application within two months from the date of seizure, give prior notification to the Crown in the manner prescribed by the regulations, and establish that he is entitled to possession of the seized object.

We preferred the expression «ministère public» (State) to the word «Couronne» (“Crown”) used in the present Act; our choice was influenced by the compelling development of the democratization of institutions and the practice that has prevailed for the past several years in the case decisions of the Supreme Court of Canada.

Ordonnance
de restitution
immédiate

25. Le magistrat ordonne la restitution immédiate de l'objet saisi au demandeur, s'il est convaincu, après audition de la demande, que le demandeur a droit à la possession de l'objet saisi et que celui-ci n'est pas susceptible de servir de preuve dans une poursuite reliée à une infraction à la présente loi.

L'objet saisi qui est frappé d'une ordonnance de confiscation en vertu de la présente loi ne peut faire l'objet d'une ordonnance de restitution immédiate.

Order of
immediate
restoration

25. The magistrate shall order the immediate restoration of the seized object to the applicant if he is satisfied that the applicant is entitled to its possession and that the seized object is not likely to be required as evidence in a prosecution of an offence under this Act.

The seized object that is forfeited pursuant to this Act may not be made the object of an order of immediate restoration.

The following changes were made: obvious simplification of the first part of subsection 10(6) of the present Act, and elimination of four cross-references.

Ordonnance
de restitution
différée

26. Le magistrat, s'il est convaincu que le demandeur a droit à la possession de l'objet saisi, mais estime que l'objet est susceptible de servir de preuve dans une éventuelle poursuite reliée à une infraction à la présente loi, ordonne de différer la restitution jusqu'à ce qu'on ait statué sur cette poursuite ou, en l'absence de poursuite, jusqu'à la fin du quatrième mois suivant la saisie.

Order of
delayed
restoration

26. Where the magistrate is satisfied that the applicant is entitled to the possession of the seized object but deems that the seized object is likely to be required as evidence in a prosecution of an offence under this Act, he shall order that restoration be delayed until after judgment or until the expiration of four months after the date of seizure if no proceedings have been commenced.

This section is a touched-up version of the second part of subsection 10(6) of the present Act, and complements the rule enunciated in section 25 of the draft.

Disposition
en l'absence
de réclamation
ou d'ordonnance

27. L'objet saisi, non réclamé dans les deux mois de sa saisie, est remis au ministre de la Santé et du Bien-être social qui peut en disposer.

Disposal
in absence
of application
or order

27. Where no application has been made for the restoration of the seized object within two months from the date of its seizure, it shall be delivered to the Minister of Health and Welfare who may then dispose of it.

The words «de la façon qu'il juge opportune» (''as he thinks fit'') at the end of subsection 10(7) of the present Act seem superfluous to us.

The two hypotheses contained in subsection 10(7) have been reduced to one; as for the hypothesis stipulating that the magistrate would not have made any order of restoration, it seemed equally superfluous to us.

Confiscation de l'objet saisi

Confiscation
en cas de
culpabilité

28. Une ordonnance de confiscation frappe l'objet saisi, relié à une infraction de possession, de trafic, de possession en vue de faire le trafic, d'importation ou d'exportation d'un stupéfiant dont l'auteur a été reconnu coupable.

Une somme d'argent qui a été saisie peut également faire l'objet d'une ordonnance de confiscation, si elle est reliée à l'infraction.

Forfeiture of Seized Objects

Forfeiture
if guilty

28. Where the accused is convicted of an offence of possession of a narcotic, trafficking in narcotics, possession of a narcotic for the purposes of trafficking, or importing or exporting a narcotic, an order for forfeiture is made in respect of the seized object related to the offence.

Any money seized may also be forfeited if it is related to the offence.

The cross-references in the present Act have been eliminated.

The enumeration contained in subsection 10(8) of the present Act has been reduced to the words «objet» (object) and «somme d'argent» (money), because of the obvious difficulties involved in making an exhaustive enumeration. The text is thereby simplified.

Everything touching upon the disposal of goods seized has been relegated to section 31 of the draft Act.

Confiscation
d'un moyen
de transport

29. Un moyen de transport saisi, relié à une infraction de possession, de trafic, de possession en vue de faire le trafic, d'importation ou d'exportation d'un stupéfiant dont l'auteur a été reconnu coupable ne peut faire l'objet d'une ordonnance de confiscation sauf si le ministère public en fait la demande.

Forfeiture
of conveyance

29. Where the accused is convicted of an offence of possession of a narcotic, trafficking in narcotics, possession of a narcotic for the purposes of trafficking, or importing or exporting a narcotic, only upon application by the Crown shall an order for forfeiture be made for a conveyance seized and related to the offence.

We have simplified the expression of subsection 10(9) of the present Act. The reader will note that there are no cross-references in the new text.

Au profit de
Sa Majesté

30. La confiscation se fait au profit de Sa Majesté.

Forfeiture to
Her Majesty

30. An object is forfeited to Her Majesty.

The idea expressed in this sentence warrants a section by itself.

Disposition

31. La disposition d'un objet confisqué incombe au ministre de la Santé et du Bien-être social qui, dans le cas d'un moyen de transport, attend trente jours à compter de la confiscation avant d'en prescrire la disposition.

Disposal

31. A forfeited object shall be disposed of by the Minister of Health and

Welfare who, in the case of a conveyance, shall await the expiration of thirty days from the date of forfeiture before prescribing its disposal.

The disposal of a forfeited object is discussed on several occasions in the present Act. It seemed interesting to us to devote a generic section of the draft to this phenomenon.

Demande
d'ordonnance
déclaratoire
d'un droit

32. Une personne qui revendique un droit sur le moyen de transport confisqué, à titre de propriétaire, créancier hypothécaire, détenteur de privilège ou d'un autre droit du même genre, peut, dans les trente jours qui suivent la confiscation, demander par écrit à un juge de rendre une ordonnance déclaratoire de son droit sur le moyen de transport confisqué.

Cette revendication n'est cependant pas ouverte à l'auteur de l'infraction qui a entraîné la confiscation, ni à la personne qui était en possession du moyen de transport lors de la saisie.

Application
for
declaratory
order of
interest

32. A person who claims an interest in a forfeited conveyance as owner, mortgagee, lienholder or any like interest may apply in writing to a judge, within thirty days from the date of the forfeiture, for a declaratory order of his interest in the forfeited conveyance.

This procedure is not open to the person who committed the offence which resulted in the forfeiture nor to the person who was in possession of the conveyance when seized.

The word «intérêt» ('interest') as used following the types of property-holders listed in subsection 11(1) of the present Act is ambi-

guous. Does it refer back to «privilège» (lien, “lienholder”) or to «intérêt» (“interest”) earlier in the sentence?

We have traded the tedious parenthesis for a paragraph and have divided the section into as many paragraphs as there were ideas.

We have even used several sections to reformulate section 11 of the present Act.

Juge
compétent

33. Le juge compétent à émettre une ordonnance déclaratoire d'un droit sur un moyen de transport confisqué est

a) dans la province de Québec, un juge de la Cour supérieure du district où le moyen de transport a été saisi,

b) dans les provinces de Terre-Neuve et de l'Île-du-Prince-Édouard, un juge de la Cour suprême de ces provinces,

c) dans le territoire du Yukon et dans les territoires du Nord-Ouest, un juge de la Cour suprême de ce ou ces territoires,

d) dans les autres provinces, un juge d'une cour de comté ou de district ayant compétence dans le comté ou le district où le moyen de transport a été saisi.

Judge

33. The judge authorized to issue a declaratory order of an interest in a forfeited conveyance is:

(a) in the Province of Québec, a judge of the Superior Court of Québec for the district in which the conveyance was seized;

(b) in Newfoundland and Prince Edward Island, a judge from the Supreme Court;

(c) in the Yukon and Northwest Territories, a judge of the Supreme Court thereof; and

(d) in the other provinces, a judge of the county or district court where the conveyance was seized.

Section 11 of the present Act, by its very length, compelled us to determine more precisely what the definitions in subsection 11(7) relate to. Our distrust of definitions has already been established, which explains why this technique is not used in the new version. Moreover, we have tried to present more clearly the purpose of the section at the beginning of the section.

Audition

34. Le juge, saisi de la demande d'ordonnance déclaratoire d'un droit sur un moyen de transport confisqué, n'entend cette demande qu'après l'expiration d'un délai de trente jours à compter du dépôt de la demande.

Hearing

34. The judge with whom an application for a declaratory order of an interest is filed in respect of a forfeited conveyance shall hear the application only after the expiration of a period of thirty days after the application has been filed.

By eliminating the following clumsy expressions from subsection 11(2) of the present Act, we have achieved an obvious simplification of the text:

1. « . . . à qui une demande est faite . . . » (‘. . . to whom an application is made . . .’) becomes «saisi de la demande» (with whom an application . . . is filed or literally, in possession [seized] of the application); the subordinate clause is replaced by an adjectival phrase.
2. « . . . en conformité du paragraphe (1) . . . » (‘. . . under subsection (1) . . .’) becomes «d'ordonnance déclaratoire d'un

droit sur un moyen de transport confisqué . . . » (for a declaratory order of an interest . . . in respect of a forfeited conveyance . . .); the cross-reference to the preceding subsection (11(1)) in subsection 11(2) of the present Act is advantageously eliminated, thus eliminating an entire series of cross-references, since the reader is also given cross-references to subsections 10(9) and 11(4) in subsection 11(1)!

3. « . . . l'audition de l'affaire . . . » (“ . . . the hearing thereof . . .”) becomes «entend cette demande» (shall hear the application), thus eliminating the synonymic duality between «demande» and «affaire» (both referring to the term “application” in English).
4. « . . . une date postérieure . . . la demande a été produite» (“ . . . a day . . . after the . . . filing of the application. . .”) becomes « . . . qu'après l'expiration . . . de la demande» (. . . only after the expiration . . . after the application . . .). These changes allow us to use fewer words and to express the legislative idea in a more precise manner thanks to the nouns «expiration», «délai» (expiration, period), «dépôt» (has been filed) and «demande» (“application”).

Conditions
requis pour
l'ordonnance
déclaratoire

35. Le juge émet l'ordonnance déclaratoire lorsqu'il est convaincu, à la suite de l'audition, que le demandeur n'est, d'une part, coupable ni de complicité, ni de collusion dans l'infraction reliée à la confiscation et, d'autre part, qu'il a fait ce qui était raisonnablement possible pour que le moyen de transport saisi et confisqué ne serve pas directement ou indirectement à la perpétration d'un acte illégal.

Essential
condition
for
declaratory
order

35. The judge shall issue the declaratory order if he is satisfied first, that the applicant is not guilty of complicity or collusion in respect of the offence related to the forfeiture and second, that the applicant took reasonable steps for the seized and forfeited conveyance not to be used in respect of an unlawful act.

In subsection 11(4) of the present Act, the legal rule is expressed in the form of a condition, supplemented with two parenthetical clauses, and followed finally by the principal clause of the sentence. The underlying logic in this sentence is far too foreign to the usual form of expression used in French. This is why in the revised text, one reads first that «le juge émet l'ordonnance déclaratoire . . .» (The judge shall issue the declaratory order . . .), and then the numerous circumstances specifying the terms and conditions for the issuance of the order are described.

In the new version, the reader will notice the disappearance of the long periphrases of the type: «. . . le requérant est innocent de toute complicité relativement à l'infraction qui a entraîné la confiscation . . .» (“ . . . the applicant is innocent of any complicity in the offence that resulted in the forfeiture . . .”). The draft version brings to the fore our concern to emphasize the principle, the centre-piece of the section, and not the monotonous enumeration of details adjoining the principle.

Contenu de
l'ordonnance
déclaratoire

36. L'ordonnance déclaratoire précise la nature et l'étendue du droit du demandeur et le déclare intact.

Contents
of declaratory
order

36. A declaratory order states the nature and extent of the applicant's interest and declares that his interest is not affected by the forfeiture.

The last three lines of subsection 11(4) of the present Act present «la nature et l'étendue de son intérêt» (“the nature and extent of his interest”) in the form of two relative clauses clumsily hitched to the word «ordonnance» (“order”), thus aping the English original. By using the active voice the content of these lines becomes more explicit.

Ordonnance
définitive
en l'absence
d'appel

37. L'ordonnance déclaratoire est définitive, sauf appel dans le délai prescrit par la procédure des appels.

Final order
in absence
of appeal

37. The declaratory order is final in the absence of an appeal within the time limit prescribed for appeal procedure.

Again by resorting to the active voice, this section highlights the conditions of the order by making the scope of subsection 11(5) of the present Act more explicit.

Appel

38. Le demandeur ou le ministre de la Santé et du Bien-être social peut interjeter appel auprès de la cour d'appel, de la décision du juge sur la demande d'ordonnance déclaratoire.

Appeal

38. The applicant or the Minister of Health and Welfare may apply to the court of appeal from the judge's decision on an application for a declaratory order.

This recast version reproduces the substance of the beginning of subsection 11(5) of the present Act but without the clumsiness of cross-referencing that accompanies it.

Cour d'appel
compétente

39. L'appel de la décision du juge sur la demande d'ordonnance déclaratoire est du ressort de la cour d'appel de la province où la décision du juge a été rendue.

Cour d'appel s'entend ici selon la définition de «cour d'appel» à l'article 2 du *Code criminel*.

Court of
appeal

39. The court of appeal of the province where the judge's decision was made has jurisdiction to hear the appeal on the decision in respect of the application for a declaratory order.

In this section, "court of appeal" means the court of appeal as defined in section 2 of the *Criminal Code*.

The definition of «cour d'appel» ("court of appeal") in subsection 11(7) is discarded in favour of an entirely separate section, thus complying with our effort to eliminate definition sections.

Procédure
d'appel

40. L'appel de la décision du juge sur la demande d'ordonnance déclaratoire suit la même procédure que les appels d'ordonnances ou de jugements que connaît la cour d'appel.

Appeal
procedure

40. The appeal procedure from the judge's decision on an application for a declaratory order shall be the same as the procedure governing appeals to the court of appeal from orders or judgments.

This restatement of the last part of subsection 11(5) of the present Act is meant to present the appeal procedure in a more direct manner.

Restitution
du moyen
de transport

41. Le ministre de la Santé et du Bien-être social ordonne, à la demande d'une personne qui a obtenu une ordonnance définitive établissant son droit sur le moyen de transport confisqué, sa restitution ou le versement d'une indemnité équivalant au droit de la personne sur celui-ci.

Restitution
of conveyance

41. Where a person is granted a final order which states his interest in a forfeited conveyance, the Minister of Health and Welfare shall, on application from that person, order that the conveyance be returned to the person or that an amount equal to the value of the interest of the person be paid to him.

In the text in force the conjunction «ou» ('or') follows the English rules of composition. We have corrected this error. We have also simplified the expression. The long periphrases are advantageously replaced by the nouns «restitution» (restoration) and «versement d'une indemnité» (payment of an amount), thus respecting the substance while improving the form.

Also, the anglicism «intérêt» becomes «droit» (interest), thus eliminating a double source of linguistic and legal interference.

CHAPITRE SIXIÈME

DÉTENTION

Trois types
de détention

42. Le présent chapitre prévoit la détention aux fins d'observation et d'examen, la détention préventive et la détention aux fins de traitement.

La détention aux fins d'observation et d'examen vise à déterminer si la personne qui en est l'objet s'adonne aux stupéfiants.

La détention préventive et la détention aux fins de traitement remplacent, sous certaines conditions, la sentence régulière prévue pour une infraction à la présente loi.

CHAPTER SIX

DETENTION

Three kinds
of detention

42. This chapter provides for preventive detention, detention for observation and examination, and detention for treatment.

Detention for observation and examination is used to establish whether or not the person subjected to such detention is a narcotic addict.

Preventive detention and detention for treatment are, under certain conditions, substitutes for the regular sentence applicable to an offence under this Act.

In the first paragraph we have added a new linking provision which is of interest only from the point of view of statutory interpretation. For, just like the traditionally recognized aids to communication such as punctuation, titles, subtitles, page lay-outs, etc., "the linking provision" allows for an easier access to the text. We do not suggest that

it is necessary, or even desirable, to use it at all times. It is at most a technique just like other techniques, such as titles and subtitles, enabling us to frame the legislative message, and carrying with it the same advantages.

Détention
préventive

43. La cour impose une sentence de détention préventive pour une période indéterminée à une personne déclarée coupable soit de trafic d'un stupéfiant, soit de possession d'un stupéfiant en vue d'en faire le trafic ou d'importation ou d'exportation de stupéfiants, si cette personne a déjà été déclarée coupable de l'une de ces infractions, ou d'une infraction au paragraphe 4(3) du chapitre 201 des Statuts révisés du Canada de 1952, ou si elle a déjà fait l'objet d'une ordonnance de détention préventive en vertu du présent article.

Preventive
detention

43. The court shall impose a sentence of preventive detention for an indeterminate period to a person convicted of trafficking in narcotics, of possession of a narcotic for purposes of trafficking or of importing or exporting a narcotic, if such person has been previously convicted of the same offence or of an offence under subsection 4(3), chapter 201 of the Revised Statutes of Canada, 1952, or has previously been sentenced to preventive detention under this section.

We have greatly modified section 15 of the present Act.

The first sentence has been divided into two paragraphs.

This section is one of the very rare cases where, because of the substance and the complexity of the sentence, it was difficult to avoid the use of the passive voice. In any event, there can be no mistake as to the agent.

We note in passing that Chapter 201 of the Revised Statutes of Canada, 1952 does not have a subsection 4(3) . . .

Détention
aux fins
d'observation
et d'examen

44. La personne accusée de possession, de trafic, de possession en vue de faire le trafic, d'importation ou d'exportation d'un stupéfiant peut être envoyée en détention aux fins d'observation et d'examen, à sa demande ou à celle du ministère public.

Detention
for
observation
and
examination

44. A person charged with possession of a narcotic, or of trafficking a narcotic, or of possession for purposes of trafficking, or of importing or exporting a narcotic may, upon application by the Crown or on his own application, be ordered detained for observation and examination.

We ask ourselves if, according to the original text (section 16), the judge could refuse to exercise the power given him by the verb «peut» (“may”). We have divided section 16 of the present Act into three sections: 44, 45 and 46 of the draft. Section 44 above discusses the action.

Émission de
l'ordonnance

45. La cour ou le juge compétent qui acquiesce à la demande de détention aux fins d'observation et d'examen émet l'ordonnance. Celle-ci peut intervenir en n'importe quel temps avant le prononcé de la sentence.

Issuing
the order

45. The court or judge having jurisdiction who agrees with the application for detention for observation and examination shall issue the order at any time before sentencing.

In the above text we identify the actor — the judge, and the instrument of the action — the order.

Contenu de
l'ordonnance

46. L'ordonnance de détention aux fins d'observation et d'examen indique,

par écrit, le lieu de la détention et sa durée, laquelle ne peut excéder sept jours.

Contents
of order

46. An order of detention for observation and examination shall indicate in writing the place of detention and its duration which shall not exceed seven days.

This section distinguishes the contents of an order from its issuance and thus permits its elements to be set out in perspective.

Détention
aux fins de
traitement

47. Lorsqu'une personne envoyée en détention, aux fins d'observation et d'examen, est déclarée coupable de l'infraction à l'origine de son envoi en détention, la cour étudie, avant de prononcer la sentence, les témoignages et les dépositions résultant de l'observation et de l'examen, y compris la déposition d'au moins un médecin.

Si la cour est alors convaincue que la personne déclarée coupable est une personne qui s'adonne aux stupéfiants, elle la condamne à la détention aux fins de traitement pour une période indéterminée.

Detention
for
treatment

47. Where a person who has been detained for observation or examination is convicted of the offence for which he was first so detained, the court shall, before sentencing, consider the evidence arising out of the observation or examination, including the evidence of at least one medical practitioner.

Where the court is satisfied that the convicted person is a narcotic addict, the court shall sentence him to detention for treatment for an indeterminate period.

This exceptionally long section describes a procedure whose elements are closely related.

The original subsection, 17(1), was virtually incomprehensible.

What qualifications are required of the doctor? It seemed that the notion of qualification did not relate to anything here so we eliminated the idea of «dûment qualifié» (“duly qualified”).

The two paragraphs are still linked by logic. We have eliminated all the cross-references.

Appel

48. Une personne condamnée à la détention aux fins de traitement peut faire appel devant la cour d'appel sur toute question de droit ou de fait.

Appeal

48. A person sentenced to detention for treatment may apply to the court of appeal on any ground of law or fact.

We shortened subsection 17(2) of the present Act by getting rid of the subordinate clauses which are so characteristic of traditional English drafting.

Also, the «question mixte de droit ou de fait . . .» (“. . . ground of . . . mixed law and fact”) has disappeared because the ambivalence of the conjunction «ou» (or) in French made it unnecessary.

Application du
Code criminel

49. Les dispositions de l'article 695 du *Code criminel* relatives aux appels d'une sentence de détention préventive s'appliquent, compte tenu des adaptations nécessaires, à l'appel ouvert à la personne condamnée à la détention aux fins de traitement.

Application
of *Criminal*
Code

49. The provisions of section 695 of the *Criminal Code* in respect of appeals against a sentence of preventive detention apply *mutatis mutandis* to an appeal to which a person sentenced to detention for treatment is entitled.

We have slightly recast subsection 17(3) of the present Act and used one of the possible translations of the Latin expression «*mutatis mutandis*» («... compte tenu des adaptations nécessaires...»; in English, literally, making allowance for obvious adjustment).

The reminder «... prévu au présent article...» (“... under this section...”) has disappeared in the new version in favour of the statement «... l’appel ouvert... aux fins de traitement» (... appeal... for treatment is entitled).

Application de
la *Loi sur les*
pénitenciers
et de la *Loi sur*
la *libération*
conditionnelle
de *détenus*

50. Une personne condamnée à la détention préventive ou à la détention aux fins de traitement est détenue dans une institution régie en vertu de la *Loi sur les pénitenciers*.

Cette personne est sous le régime de la *Loi sur la libération conditionnelle de détenus*. Pour l’application de cette loi, elle est réputée, pendant son incarcération, être un détenu et, dès sa libération aux termes d’un certificat de la Commission des libérations conditionnelles, être un détenu à liberté conditionnelle.

Application
of *Penitentiary*
Act and
Parole Act

50. A person sentenced to preventive detention or to detention for treatment shall be confined to an institution operated pursuant to the *Penitentiary Act*.

Such person is subject to the provisions of the *Parole Act*. For purposes of the application of that Act, the person is deemed to be an inmate during his confinement and to be a paroled inmate upon his release in accordance with a certificate of the National Parole Board.

The words «maintenue» (“maintained”) and «dirigée» (“operated”) in subsection 18(1) of the present Act seemed so similar to us that we feared a redundancy. We preferred the word «régie» (operated), which combines the nuances, if any.

Subsection 18(2) of the present Act speaks of a person who is «assujettie à» (“subject to”) the Act. We prefer to use the expression «sous le régime de la loi» (subject to the provisions of the . . .), for all are subject to («assujetti[e] à») the law, but the fact of being «sous le régime de la loi» indicates clearly that the person’s status is determined by the provisions of the statute in question.

We have generally restructured the sentences.

Limitation

51. Le certificat de libération conditionnelle a pour effet de limiter la période indéterminée de la détention aux fins de traitement, à une durée maximale de dix ans à compter de la date de la libération. Toutefois, la révocation ou la déchéance de la libération fait perdre au détenu à liberté conditionnelle le bénéfice de cette limitation.

Est inadmissible à ce bénéfice une personne qui, lors de la déclaration de culpabilité qui a entraîné sa détention, avait déjà été déclarée coupable d’une infraction à la présente loi ou au chapitre 201 des Statuts revisés du Canada de 1952.

Limitation

51. Where a person sentenced to detention for treatment is released in accordance with a certificate of the National Parole Board, the rest of his sentence is limited to a maximum of ten years. This limitation is however lost upon forfeiture or revocation of parole.

A person is not eligible for a limited sentence if he has been convicted of an offence under this Act or chapter 201 of the Revised Statutes of Canada, 1952 before the conviction which resulted in his detention.

Subsection 18(3) of the present Act defies all understanding. From what we have been able to comprehend, after many readings and much

speculation, we have produced section 51 of the draft. We have composed three sentences and two paragraphs which, we hope, will be understood not only by jurists but also by laymen.

Loi
provinciale

52. Une personne qui s'adonne aux stupéfiants et qui est détenue aux fins de traitement sous le régime d'une loi provinciale est réputée, pour les objets de la *Loi sur les pénitenciers* et de la *Loi sur la libération conditionnelle de détenus*, avoir été envoyée en détention aux fins de traitement en vertu de la présente loi.

Effect of
provincial
legislation

52. A narcotic addict confined to detention for treatment pursuant to a provincial Act shall be deemed, for the purposes of the *Penitentiary Act* and *Parole Act*, to have been sentenced to detention for treatment under this Act.

In order to give a certain terminological coherence to the different chapters, we chose to use the term «stupéfiant» (narcotic) instead of «narcotique». This example illustrates the danger in translating statutes. Whence the interest in the computerized processing of texts to assure an increased control over lexical elements. Linguistic interference is a well-known phenomenon among translators: why expose oneself needlessly to this danger?

Accord avec
les provinces

53. Le ministre de la Justice peut, sous réserve de l'approbation du gouverneur en conseil, conclure un accord avec une province dont la législature a édicté une loi prévoyant la détention aux fins de traitement d'une personne qui s'adonne aux stupéfiants sans toutefois être accusée de possession d'un stupéfiant.

L'accord porte sur l'incarcération et le traitement de cette personne dans une institution régie en vertu de la *Loi sur*

les pénitenciers et, également, sur sa libération et sa surveillance en conformité de la Loi sur la libération conditionnelle de détenus.

Agreement
with
provinces

53. Where a province enacts legislation designed to detain for treatment a person who, although not charged with possession of a narcotic, is a narcotic addict, the Minister of Justice may enter into an agreement with the province, subject to the approval of the Governor in Council, for the confinement and treatment of such person in an institution governed under the *Penitentiary Act*. This agreement may also provide for parole and supervision of such a person pursuant to the *Parole Act*.

We have tried to improve the drafting: first, by enunciating the principle; second, by specifying the application of this principle; and third, by dividing in two the original sentence in order to make the text easier to grasp.

IV

A New Look

The analysis and reconstruction of the two legislative texts that we presented in the preceding chapters gave us the opportunity to search for possible solutions to the many problems posed by the drafting of laws in French. This exercise was most beneficial for, without preconceived ideas, indeed with open minds, we were able to cast a new look at, and reflect upon, the many facets of drafting legislative texts in French. We now summarize our observations.

Firstly, we touch upon both the law in general and bilingual statutes; then we look at the structure of ideas, the elements that make up the statute, the interpretation problems involved, and, finally, stylistics as applied to statutes, before concluding the discussion by recalling a few fundamental notions.

1.

The Law and Bilingual Statutes

The written law is defined as being the expression of the general will. It can equally be said that the law is a general written rule that is intent on being permanent. Moreover, it can be defined as the means of expression and action of the sovereign Parliament. The list of possible definitions would be long.

The written form of the legal rule is becoming a widespread practice in Western countries, and even in common-law systems. The law therefore appertains to the field of communications as do all texts. With whom does the law communicate? In most cases, it is with the whole of the population. Indeed, the law addresses itself to everyone without regard to the level of education or the background of those who are subject to it and who use it.

Another characteristic of the law is that it is a rule imposed on everyone. The combined fact that the law, expressed through legislation, addresses itself to, and imposes itself on, everyone bears with it, in our opinion, certain consequences as to the manner in which it ought to be elaborated. If legislation is to be effective, and, indeed, if the rule that it comprises is to be respected, it must be understood by those to whom it is addressed and on whom it is imposed. It is difficult to imagine that rules can be imposed on a population without everything being done to ensure that their meaning is accessible to as many as possible. This entire study is centred around the idea that citizens should have easy access to statutes and legal texts in general, and be able to understand them. This necessarily implies that an appropriate means of expression must be adopted and, whether one likes it or not, brings into the study of legislative drafting techniques, the incorporation of important parameters drawn from linguistics.

In Canada, federal statutes are presented in the two official languages, French and English. Both texts are therefore equally authoritative. The problem nevertheless lies in the fact that one of the texts is nearly always a translation of the other. To many jurists, the translation is nothing more than a means of making people understand a message that was written in a language that they do not speak. To say the least, this is a seriously truncated view of the phenomenon. Indeed, everything hinges upon the definition of translation.

In the case of certain fields such as the translation of technical aeronautics manuals, it is possible to carry out a translation that revolves around the words only. However, this word-for-word technique is often not applicable in many fields in which man is called upon to express himself, for, at times, translation requires more than just the substituting of one word for another. Translation thus becomes the vehicle for transposing a thought, not only from one language to another, but from one culture to another. Now, this element brings into play certain cultural reflexes and connotations, and involves the interaction of semantic fields that do not necessarily correspond to one another.

In the field of legal translation, another problem arises: legal texts convey a legal thought, and legal reflexes as well as the methods of interpretation, whether explicit or implicit, of this legal thought. It is a known fact that, in general, different cultural communities organize their internal relationships in different ways resulting in legal contexts that differ both in conception and expression. Thus, we find that certain legal systems are based on an inductive-type of reasoning while others adopt a deductive-type of reasoning. In the same way, certain systems are conceived according to more repressive standards than others.

The common-law system, for example, has been conceived neither by francophones nor for francophones, and vice versa for the Civil Code. This does not mean, however, that francophones cannot live free and happy in a common-law system. But it must also be recognized that the common law is based on principles that are very often foreign to the culture of francophones.

What then does the idea of making bilingual statutes mean? It means that, by way of translation, a rule is drafted in French, which is intended to produce an effect equivalent to that of the rule in English. At the outset, this is a rather ambitious objective, to say the least, for the reasons already mentioned.

Generally, the text is first conceived in English by anglophones, and therefore in accordance with criteria proper to the English language and pursuant to a concern which, ineluctably, is that of solving problems arising principally in the context of an anglophone mentality. Subsequently, when the rule of law conceived in English by anglophones has been worked out and drafted, a translator is entrusted with the task of preparing an "official" French version. Finally, a francophone legislator revises the translated text. Of course the translators and revisers do their best within the strict mandate confided to them. Nevertheless, their mandate, just like their capabilities, is not to translate from common law into a French-type of law, but rather to translate rules of common law into French.

In most cases, the equality in scope of the texts is little more than a fiction⁹ intended to support the presumption according to which the English rule, when expressed in French words, will be accepted and understood by francophones in the same way that the anglophones have accepted and understood the rule expressed in English. Two situations can thus develop. In the first case, the francophones will be unable to identify with this rule, because it does not relate directly to

their customs nor, sometimes, to their expectations. They will therefore find it difficult to understand the scope of a law that they nevertheless have to respect. In the second case, by tradition, by the force of circumstances, the francophone community, for instance, is led to accept the fact that the new law will be conceived in English.

The standpoint that prevails in the second hypothesis nonetheless does not resolve the problem of finding rules that are both equivalent and appropriate to the mentality of each of the communities concerned. Indeed, it is not because a community has accepted to live according to rules conceived by and for the neighbouring community that this will necessarily bring about a general movement toward the acceptance of the customs of the dominant cultural community. For, even in the case of the second hypothesis, we cannot ignore the existence and the dynamics of two cultures in Canada, one of which, however, is not as fortunate as the other in inspiring and conceiving the rules governing Canadian society.

Finally, another interesting aspect of Canadian statutes should be mentioned: the same rule is expressed twice therein, and both times in an official fashion. Since the two texts theoretically have the same value, it is imperative for the law to be coherent, that the two texts also carry the same meaning for everyone. We have already seen that the matter could become more difficult than foreseen. As alarming as this may appear at first, we can gain but for a brief moment some satisfaction and comfort by looking at the problems of others, particularly those of Belgium and Switzerland, and those of the member states of the European Economic Community, who have not hesitated to give themselves six official languages and normative texts conceived in these six languages, without any one of them being the final official reference point in case of divergence.

Acknowledging the approach taken by the Europeans in this area cannot help solve the problems that have always existed in Canadian legislation, for we now know that current translation techniques do not offer any solutions to the problems of bilingual legislation.¹⁰ Furthermore, these techniques are not the only matters involved, for a terminological clarification is equally essential. While the problems of terminology are numerous, and most often arduous, it would be unwise, indeed futile, to deal with them through the sole methods available to that science. Let us quickly examine a few of the reasons for this assertion.

Firstly, in a bilingual legal context, it is not wise to believe that an English legal term can be translated into French by another term, in the hope that this translation will be correct, satisfactory and that it will endure. Indeed, even if, in a given context, the translation of an English term *X* by a French term *Y* is correct, one cannot conclude therefrom that *Y* corresponds to *X*, or that these two terms notably share an identical semantic field. From this stems an initial difficulty.

Secondly, it can be difficult to find a term *Y* that is not only a correct, but also a satisfactory translation of *X*. The corollary problem of the connotation of words is raised here. Even if *Y* is a correct translation of *X* in the given context, can we be sure that, in the two languages, *X* and *Y* will have both a common meaning and the same useful connotations?

Finally, even if the translation of *X* by *Y* is correct and satisfactory, the question arises of whether the two terms are fated to the same lasting stability or to an identical evolution. Indeed, however perfect the correspondence between *X* and *Y* may be in a given context, it must not be forgotten that each of these words evolves in a given legal system and culture. It is a recognized fact that within a legal system the meaning of words can evolve according to usage, but still more, by virtue of the interpretation given them by the courts. It would be misleading to think that the meaning of the word *X* in the English legal vocabulary will evolve in the same way as the meaning of the word *Y* in the French legal vocabulary.

We are not affirming here that it is impossible to function according to bilingual or multilingual legislation. We are simply emphasizing the fact that the law which governs the internal relationships of a society, is necessarily the reflection of a way of thinking. Bilingual legislation would suppose, if it is to be a harmonious and balanced system, that the two founding communities have compatible dynamics and share noticeably converging tendencies as to fundamental options of government.

The Structure of Ideas

We have said that the statute is a written rule, a text. This study does not claim to be teaching anyone anything new by stating that a text is composed of words assembled together according to a given method, be it conscious or unconscious. Each type of text has its own constraints; whether a poem, novel, teaching manual or something else, each should be treated in its own particular way. In the case of the statute, the text creates a state of fact that is, by definition, intangible for the person who is subject to its application. Indeed, the statute is apt to prescribe a mode of social behaviour or create new situations. In any event, the statute, which does not speak for the sake of speaking, is supposed to state a modification in the state of the law. And finally, the statute creates rights and obligations.

This is why it is important that statutory provisions concerning all of us indicate clearly to everyone what his rights and obligations are. In the case of specialized statutes such as the two we chose as a testing ground for this study, it is necessary to specify what is the nature and what are the attributes of the administrative agency that is being set up, or again, to state what act is considered to be an offence and in what way the law intends to fight against it or to provide a remedy for it.

Once the elements that are to be used to draft the statute can be listed and clearly identified, there is no reason why an effort should not be made to measure their relative importance within the meaning and scope of the statute, and thus adapt the structure and the internal ordering of the text accordingly.

Furthermore, two closely related phenomena should be noted. When one speaks of the written law, it should be specified that the text referred to is of a legislative nature in general. The written law that just a century ago comprised the whole of legislative law, has now expanded and become diversified. Texts of a legislative nature now cover many different aspects, such as: constitutional law, general application legislation, ordinary legislation, special legislation, and subordinate legislation.

This typology has not come about by chance alone. It comes as a result of dividing up the law of a legislative nature according to criteria based on its nature and its relative importance. Thus, the legislative message is now contained in several different types of texts. The citizen should be made aware of this distinction and be able to perceive the import of it. In fact, it is of paramount importance that the citizen have at his disposal all of the tools that will allow him to determine the relative value of the different legislative texts, their hierarchical ordering, in brief, the role that certain rules of law play with respect to others.

Indeed, in 1980, there are so many texts of a legislative nature that it is indispensable, not only to draft them in a language that is easy to understand, but also to structure their internal contents and organize their relationships in such a way that the citizen can logically locate each rule with respect to the others, and can also locate rules at the documentary level, that is to say, be able to retrieve them easily.

The statute is a message, a discourse, and, in order for it to be understood, it is necessary that the reader assimilate the ideas found therein with a certain ease. Now, a group of ideas directed towards a certain end, towards a productive comprehension of the facts, should be articulated so as to lead the reader to grasp the relative importance of the elements of the discourse. From this perspective, there are at least two ways to make the reader understand that there are certain relations to be drawn between the different elements in the legislative text, and that these relations form an integral part of the meaning of the text that he is reading. In other words, the statute, the legislative text in general, is a text whose elements form an integral whole; that is, as we know already, each element ought to be interpreted with respect to the others.

This leads us to believe, as do many philosophers, that the order in which the ideas in a discourse appear has more than a merely aesthetic importance, for it also carries a functional significance that is relevant, on the one hand, for an understanding of the discourse, and on the other hand, for retrieving the various elements. Indeed, a disorganized discourse, in which the writer presents his ideas without following a logical sequence, has less of a chance of being understood than a discourse in which the reader can follow a certain chain of reasoning. Moreover, given the plethora of present legal documentation, it is essential to be able to retrieve by logical means a given

element included in a large aggregate. Such is the case with the telephone directory. In the white pages, the information is listed in alphabetical order, and in the yellow pages it is organized according to the combined criteria of thematic classification and alphabetical order.

Having said that the written law is necessarily a logical sequence of ideas, it might appear strange to give the user direct access to one of the elements of the sequence without dealing with the larger context. We must not limit ourselves to the case of a person who reads a text for the first time and is quite concerned about knowing the general organization of the text. Once he has become familiar with this general organization, he may, on occasion, need to refer to a precise element, section or paragraph, and be able to find it as fast as possible. If one excludes the possibility of a computer search or the hypothetical use of an index, there is reason to believe that the reader will have to use his own mental processes to find the given element. Because of this, the more logically the text is arranged, the more easily the reader will be able to follow its ideas and locate its component elements.

Up to now we have discussed the logic behind the organization of the elements of a text; we must now proceed farther and determine the type of logic that should be employed. It is on these grounds of logic, that once more the cultural differences between the many users of Canadian federal law take on significant importance.

Logic is not a unique way of thinking that one either has or doesn't have. There exist an infinite number of logical schemata that apply to human thought. Yet again, it is the culture of his milieu that generally leads a human being to adopt a particular form of thought. We will not touch upon the question of whether this is a one-way influence or whether it is a matter of interaction. Among the many existing patterns of thought and expression, there is one that is widespread amongst francophones; that is, the process leading from the essential to the subordinate. Of course, logic varies according to the individuals concerned. However, we still believe that it is important to focus on the logic of the target-reader, a logic that must be defined with respect to the object, the scope and the technical nature of each statute. In any discourse, whatever its nature, and provided, of course, that its purpose is to be informative, the information must be presented to the recipient in such a way, that, on the one hand, it indicates the principal orientation of the discourse and, on the other, it gives the reader the possibility of summarizing and remembering the essence of what he has read or heard. Consequently, additional information or details would follow as a matter of course.

The progression leading from the essential to the subordinate appears at all levels of expression. Thus, it is possible to imagine that the legislator, when intervening in a given sector, would first establish the parameters of his intervention, by determining the principles of his intervention and giving the general orientations that he wants to impress on the activity of the given sector. Then, in each one of the particular statutes, the legislator would deal first with the principal ideas, before providing in subsequent sections for the terms and conditions required for their application. Finally, within each title, chapter, part and section, he would point to what is important in each of these subdivisions by placing it at the beginning.

This does not seem to be the method adopted by the anglophone drafter, if one is to judge by the order in which ideas are presented in existing federal statutes. Thus, if we refer to the typology outlined earlier, we can see that the English-trained legislator does not seem inclined to intervene in a global manner in order to regulate the functioning of entire sectors of human activity. He prefers to act on specific points so as to resolve well-defined problems that have arisen and which the courts have not been able, or have not wanted to resolve.

In support of this assertion, we observe that even within a statute, the English drafter and the legislator do not appear to feel compelled to refer first of all to the essential elements. Thus, in the first statute under examination, which provides for the establishment and modes of operation of the Canadian Dairy Commission, we would have expected to find out at the beginning of the text the reason for which the Canadian Dairy Commission was established, that is, the object of that Commission. However, one must read nearly half the text in order to learn, in section 8, that "(t)he objects of the Commission are to provide efficient producers of milk and cream with the opportunity of obtaining a fair return for their labour and investment and to provide consumers of dairy products with a continuous and adequate supply of dairy products of high quality." Yet, for a francophone, it seems more logical, when a government agency that is to regulate an economic sector is established, first of all to inform the public, the citizens, the jurists and the agency itself about the goals that the State is seeking to achieve by intervening in this area. Let us state without fear of contradiction that this structure, which seems very strange to us, was the English drafter's choice, for the statute was conceived and drafted in English before being simply translated in French. The fact that the French text repeated this arrangement is the result of resorting to translation, thus preventing the adoption for the French version of a structure differing from that of the original, the English text.

By adopting the approach leading from the essential to the subordinate in the revised text of the *Canadian Dairy Commission Act*, we wanted to indicate the principal facts right at the beginning. However, we were forced to retain one definition because the original text included sherbet in what we have categorized as dairy products. Had it not been for the legislator's rather strange notion of assimilating sherbet to dairy products, we would have been able to do without a definition section altogether. "Dairy products" is a well-known expression, and from all indications, the judge, as well as those subject to the Act, does not need this pseudo-definition, whose usefulness is indeed debatable. This point and other debatable aspects of "definitions" are discussed in part 3 of the present chapter entitled "The Elements of the Statute".

Therefore, if one excepts the first section in which, reluctantly, we have inserted a definition, information basic to the statute is to be found in section two — the fact that a dairy products commission is established. Section three indicates where the headquarters of the Commission are, and in section four we indicate that "(t)he object of the Commission is twofold: first, to allow efficient producers of milk from cows and cream from such milk to obtain a fair return for their labour and investment; and second, to provide consumers with a continuous and adequate supply of quality dairy products."

By focussing on the object of the Commission in this particular case, we ascertain the basic reason for legislative intervention.

In the present text of the *Narcotic Control Act*, there is no section stating its object. We have included one in the revised text because it seems essential to us that every statute indicate the goal sought by the legislator in a specific section created for that purpose.

Finally, throughout the two revised texts, we have classified the information provided in each of the statutes by order of decreasing informative importance. It is not that certain pieces of information are less important than others, for all the elements of a statute are important to its legal coherence. What is important to the reader is the order in which these elements are presented to him, their logical sequence.

Even within one single section, greater clarity can be achieved by adopting a process leading from the essential to the subordinate. If we refer to subsection 9(1) of the present text of the *Canadian Dairy Commission Act*, we can gather from the listing of the powers of the

Commission that the reader, whether he be citizen, jurist, dairy producer or judge, is engulfed in a mass of details that, obviously, cannot possibly describe the contemplated reality in an exhaustive way. However, the legislator, no doubt in order to cover up what may have been left out in his litany of specific details, considered it necessary to establish that the Commission could also "do all such acts and things as are necessary or incidental to the exercise of any of its powers or the carrying out of any of its functions under this Act". It seems to us that the legislator could have indicated this right at the beginning, since this section deals with the general framework of the powers of the Commission. In fact, this provision should have sufficed in all logic to indicate to whomsoever concerned that the Commission was empowered, by virtue of the statute, to do all that was necessary to achieve its object.

That is why, having decided to retain for information purposes only the enumeration of powers contained in the present statute, we have insisted on highlighting three facts with the aid of the word «notamment» (especially). Firstly, we wanted to draw the attention of the reader to the fact that in section 6 of the revised text the details contained in paragraphs (a), (b), (c), (d), (e) and (f) are an integral part of the general framework of powers attributed to the Commission in the opening statement of section 6. Secondly, we wanted to indicate by the word «notamment» that the enumeration was there only by way of example, just in case the individual subject to the Act did not have enough imagination to define "whatever is necessary, mainly or incidentally, to carry out (the object of the Commission)". Finally, by using the word «notamment», we wanted to indicate that the enumeration (a-b-c-d-e-f) is not exhaustive.

We applied the same principle to section 12 of the present Act. After a promising introduction ("The Governor in Council may make regulations regulating the marketing of any dairy product") that could have led one to believe that all the generic information in the section had been expressed at the beginning, we find in paragraph (h) a provision cast in the same mould as that of paragraph 9(1)(e) of the present *Canadian Dairy Commission Act*:

12(1) The Governor in Council may make regulations . . .

(h) generally, for carrying out the purposes and provisions of this Act.

Once again, having afflicted the reader, the user of the law, with a glut of rather unusual details, the legislator has chosen to fill the gaps in his enumeration, which becomes less comprehensive as it grows

longer, by adding a provision that simply makes the details listed in *a-b-c-d-e-f-g* quite useless; there is no point in mentioning them because they could have been determined by way of simple deduction.

Here again it would have been entirely logical to indicate in the statute that the Governor in Council can make regulations concerning the realization of the objects of the Commission and the application of the statute. This is what we have tried to do in section 45 of the revised text, since we thought that *a-b-c-d-e-f-g* were simply examples illustrating the general provision found in paragraph 12(1)(*h*) of the present Act. Therefore, we have first transferred paragraph (*h*) to the beginning of the section; it has thus become the heading of the enumeration in section 45 of the new text. Secondly, we have retained the enumeration of examples for pedagogical reasons. Actually, this was not our initial inclination, but since our goal was to prepare a new, yet equivalent text in spite of basic differences in layout and presentation, we thought that any modification, however logical, that would result in the elimination of *a-b-c-d-e-f-g*, would be a step removed from keeping the exact correspondence between the effects of the present Act and those of the new proposed text.

Finally, in the *Narcotic Control Act*, subsection 10(4) lists all the possible objects that a peace officer can “break open” («forcer, enfoncer, briser») in his search for narcotics. It seemed simpler to us to designate the place to be searched and “anything therein” («ce qui s’y trouve», section 22 of the revised text).

The examples mentioned above bring to the fore a vast problem, indeed a problem too vast to be treated in any detail in the framework of this study, that is, the difference in attitude between the anglophone and francophone jurists towards the representation of reality. It is a recognized fact that the anglophone has a tendency to describe reality by way of examples and concrete details, without concerning himself with linking these to a general principle, a generic term or a general case. The statute is inevitably, by the very words it uses, a first step towards abstraction since it tends to represent in a normative manner and, in certain respects, in a prospective manner, the reality of social behaviour. It seems that the anglophone drafter feels compelled to express his thought by assessing all the constituent elements of a rule and that he tries to foresee all applicable cases. The anglophone jurist knows just as well as his francophone counterpart that it is usually impossible to foresee all the cases in which a given rule would apply. However, due to certain traditions and cultural facts that would take too long to present here in detail, the anglophone drafter always seeks

to attain that which would appear utopian to a francophone, that is, an exhaustive enumeration of cases in which the given rule would be applicable. Almost invariably, the list ends with a provision that appears to be an admission of his inability to finish the list.

We think that, insofar as the drafting of statutes in French is concerned, it is not only possible but desirable to limit the legislative draft to clear principles from which the citizen or the judge can deduce the different cases of application of the rule. Of course, pedagogical pursuits are perhaps a pretext used to continue listing examples of application of rules by having recourse to the very handy word «notamment» (in particular), as we have done in the revised texts. Nevertheless, we believe that one can be precise by dispensing with all these details, which only serve to disguise the principle.

This brings us back to the question of whether it is useful to try to foresee everything in a statute. As far as we are concerned, we believe that once the principle is clearly stated it would be reasonable to rely on the common sense of the citizens and judges, and to let them establish, in each particular situation, the scope of application of the principle. Several reasons lead us to adopt this stance, notably the axiom according to which any enumeration is restrictive; the anglophones themselves have also drawn a rule of statutory interpretation from this axiom: *Expressio unius est exclusio alterius* (The listing of one element excludes the others).

3.

The Elements of the Statute

The drafting of a legislative text entails a number of complications that are not always obvious to the legislator; these lie as much on the legal level as on the linguistic, that is to say that they involve both provisions of substance and form. One of these complications, and not the least important, is the realization that each text calls for a tailored structure. It is therefore necessary to examine the principal constituent elements of a statute in order to briefly analyse their importance and

the drafting principles that should be applied to them. We will consider the following elements: the title, definitions, object, powers and duties, regulations, the significance of the section and, finally, cross-references.

Title

We will not discuss anew the controversy concerning the usefulness of long titles and short titles. We will simply support the present tendency towards a single title that is sufficiently evocative and brief so that one is not compelled to summarize it, or does not regret it being too short. It seems, however, that the tradition of the long title is losing more and more ground since several Canadian provinces now simply use a short title only.

What purpose does the title serve? It plays at least two roles. On the one hand, it allows us to locate a statute amongst the numerous others in the statute books. On the other hand, it gives the reader a first indication of the subject matter of the statute.

Although the title ought to give an indication of the subject matter of the statute, it must not be so precise as to "predict" the content of the statute. For this reason, it should be brief, simple and as evocative as possible. Within these three limits, three criteria should be respected. Firstly, from the terminological point of view it is important that the terms used in the title reflect the vocabulary found in the body of the statute. This is in keeping with the general recommendation not to use two words to designate the same reality or, inversely, not to designate two realities by the same word.

Secondly, it can be of interest to mention in the title the type of change in the law that the statute brings about with respect to an existing statute. Thus, a statute modifying a given legal situation can be called "An Act to amend . . .". Similarly, a title can indicate the degree of importance of this legislation as in the case of "Evidence Code", "Declaration . . .", or "Charter . . .".

Thirdly, the title should refrain from reflecting — as should the body of the statute — the existing turbulent political circumstances or any overly partisan attitudes that might have prevailed at the time the rule was elaborated.

It is important to keep in mind that the title should especially be a sure instrument for locating the text that it heads. On that subject, the imperatives of computer programming should be taken into account when drafting the title. It is quite conceivable that sooner or

later the whole body of statutes and perhaps even all texts of a legal nature, will be stored in magnetic tapes, disc memories or other processes linked to computers. The computer being a machine as stupid as it is marvellous, we must see to it that the title is sufficiently evocative of the contents of the text for one to be able to find simultaneously the title and the text by means of the computer and with the help of keywords.

In light of these few ideas, does the long title of the existing statute providing for the establishment of a dairy commission for Canada appear to be suitable? No, and for at least three reasons.

In the first place, this statute does not only provide for the establishment of a dairy commission for Canada: it actually does establish it. This, moreover, is what section 3 of the existing Act says:

There shall be a corporation to be known as the Canadian Dairy Commission . . .

It is therefore already possible to eliminate the verb "to provide" in the title.

Secondly, the present statute not only establishes the Canadian Dairy Commission. It also fixes its objectives, its modes of operation, powers, duties, corollary powers of regulation by the Governor in Council, etc. Because of this, the word «création» ("establishment") introduces a notion that is too restrictive, and which has the effect of limiting the expectation of the reader to an act of «création». Moreover, the short title, always appearing as the first section in all federal statutes, is general in scope in the case under study, that is the *Canadian Dairy Commission Act (Loi sur la Commission canadienne du lait)*, thus indicating to the reader that the statute does not only establish the agency.

Finally, it is odd to find the word «lait» (milk) in the French title whereas the word "dairy" used in English covers a much broader range that refers to all dairy products. For this reason, in the new text, we prefer to speak of the "National Dairy Products Commission Act" («Loi sur la Commission nationale des produits laitiers»). As to the elimination of the qualifier "Canadian", it should be noted that this term is used in reference to an entity that defines itself with respect to foreign countries. Since this statute designates in particular a body whose primary authority is exercised within Canada, the word is not necessary.

In An Act to provide for the control of narcotic drugs, the elimination of the long title and the subsequent use of the short title — the *Narcotic Control Act* — as the one and only label, allowed us to apply our three criteria of quality: conciseness, neutrality and the descriptive value of the title of the Act.

With regard to this last criterion, we are not entirely satisfied with the title retained in the case of the dairy products Act. This is due to the fact that, in the original Act, the legislator includes sherbets in the category of dairy products. We understand too well that this is an acrobatic feat that enables the imposition, in this case, of rules designed for the marketing and sale of dairy products to the marketing and sale of sherbets. This, of course, eliminates the necessity of passing special legislation in respect of sherbets. One notes in this regard the lack of concern on the part of the legislator with respect to semantics and the lack of consideration shown for the user of the statute, who has to keep in mind that each time he reads “dairy products” he must think to himself “dairy products *and* sherbets”. This is by no means a great stroke of genius in legislative drafting but simply an easy way out for the legislator who has transferred his conceptual problems to the reader of the text rather than trying to resolve them himself. Would a person intent on learning something about the law concerning sherbets have any notion of looking in the *Canadian Dairy Commission Act* (the present Act) or in the “National Dairy Products Commission Act” (the proposed Act whose title is no more explicit)?

The sherbet-dairy product problem crops up again in the context of definitions. This difficulty stems from the fact that the legislator has developed the habit of making statutes that appear ever so slightly “catch-all” legislative rules applying to a somewhat heterogeneous group of human activities. That is not in itself heretical. The problem arises as soon as the legislator wants to find a generic term to designate in a convenient way and within the body of the statute, the elements to which the statute applies. In the case under examination, the statute applies to dairy products and sherbets. How should this be indicated to the user of the statute? By a definition?

The terms “sherbet” and “dairy products” could have been repeatedly stated together, for example. That would have undoubtedly made for tedious reading. Sherbet, as a phenomenon, could equally well have been set apart in a separate chapter with a single section that could have read: “The production and marketing of sherbets are governed by the rules enacted under the present statute in respect of the production and marketing of dairy products.” The advantage of

using this formula instead of that found in the text presently in effect is more significant than would first appear. This advantage relates essentially to the formulation of the statute in that one does not have to resort to a phenomenon that should be clearly delimited before being energetically denounced: definitions that are only *applicable* to a statute in particular.

Definitions

After the title, there very often appears in British-type statutes a section reserved for “definitions” that is sometimes quite long. The definitions are usually provisions aimed, in principle, at facilitating the interpretation of legal texts. There are several types of these so-called “definitions”.

- In common-law context

Let us first examine the definitions that we believe to be well-founded.

The legislator sometimes feels that he has to point out to the reader of the statute what he means by such or such a word. It is not that he intends to give the word a radically different meaning from the one it usually has, but simply to inform the reader that he has chosen to give the word a particular meaning to the exclusion of other definitions also recognized by the dictionary. The legislator is therefore working within the framework of sound lexicography. However, two remarks come to mind. On the one hand, this definition is superfluous to the extent that the strictly current meaning of the word is retained. On the other, languages evolve, whereas the law is permanent. To reproduce in a statute the meaning that a particular word has at a given moment may jeopardize the future value of the written law because it is possible that twenty years from now, for example, the statute will contain a definition that will no longer correspond to the meaning the word has acquired during those twenty years.

We will now examine the definitions of dubious or poor quality. The legislator sometimes resorts to the process of “definitions” to redefine the world and incorporate a substantive provision in a statute. Different types of situations can therefore arise, and in particular these four:

- a. A word is given a more restrictive meaning than it normally has. This is the case, for example, in the dairy products Act;

it is stated that «commercialiser» (“to market”) means «commercialiser sur le marché interprovincial ou sur le marché d’exportation» (“to market in interprovincial or export trade”). Consequently, the definition firstly restricts the current meaning of the term “to market” to interprovincial or export marketing, thus excluding marketing within a province. Secondly, this definition is extremely important since it indicates the jurisdictional limits of the statute, and specifies to what field of human activity it applies; in sum, the definition has been used to introduce a substantive provision. However, substantive provisions, especially of this importance, should not appear in a definition. For this reason, in the new text, we preferred to provide a special section (section 5) whose object is to state that «La commission est compétente, en matière de commercialisation des produits laitiers sur le marché interprovincial et sur le marché d’exportation.» (The Commission has jurisdiction over marketing of dairy products in interprovincial and export trade.).

- b. The definitions found in British-type statutes sometimes serve to give a word a broader meaning than it has in current usage. Such is the case in the statute under study with the definition of the term “dairy products”. The word “sherbet” has been added to the meaning that the term “dairy products” has in current usage. But everyone knows that sherbet is not a dairy product any more than a frog is a fish, or a snail, a shellfish. This type of confusion is already a very common and regrettable enough occurrence; the legislator should do his utmost not to project haphazardly into the text his own semantic vagaries, and should also avoid at all cost knowingly introducing other confusing factors into the thought or language of the citizen. It must be recognized that it is tempting to resort to such definitions. But, as we said above, the comprehension of the text, the citizen’s own language, and legal certainty are jeopardized.
- c. It sometimes happens, but fortunately not too often, that the drafter gives a word a meaning that is completely foreign to it. This is the case when a word is attributed a meaning that the citizen would never think of giving it. For example, in the *Canada Business Corporations Act*, one reads: ««Envoyer» comprend remettre» (“‘Send’ includes deliver”). In An Act to amend the *Canada Business Corporations Act*, the old French version of the Act was repealed and a new one entitled *Loi sur les sociétés commerciales canadiennes* was substi-

tuted for it.¹¹ In the new Act the definition now reads: ««Envoyer» a également le sens de remettre». This is an extreme case that we would like to believe is no longer found in statutes.

- d. The definition technique is also used to counter the possible disastrous consequences of a sometimes surprising case-law. This is the case, for example, in the *Narcotic Control Act* where care is taken to define the term “conveyance” simply to confirm the fact that an airplane is a conveyance. One would have thought that it was well within everyone’s reach to classify airplanes as a means of transport. However, since one judge decided otherwise, the legislator was led by the authority of the case-law to counter this aberration; again, one would have thought this to be an isolated incident if, in another case, a judge had not refused to consider that an airplane was a place. This forced the legislator to specify that «lieu» (“place”) meant «lieu comprend tout .. aéronef» (“place, includes . . . aircrafts”). Let us be thankful that all courts have not adopted the same criteria for deciding on the nature of things.

- In general context

It happens sometimes that in legislative texts, as a result of adopting a more responsible attitude, one finds definitions that are helpful both on the legal and linguistic levels. Two parallel examples follow, one drawn from the Civil Code of the Province of Québec and the other from the Civil Code of France.

La vente est un contrat par lequel une personne donne une chose à une autre, moyennant un prix en argent que la dernière s’oblige de payer. (art. 1472, Code civil de la province de Québec)

Sale is a contract by which one party gives a thing to the other for a price in money which the latter obliges himself to pay for it.

La vente est une convention par laquelle l’un s’oblige à livrer une chose, et l’autre à la payer. (art. 1582, Code civil français)

[TRANSLATION]

The sale is an agreement by which one party commits itself to deliver a thing, and the other to pay for it.

These definitions are clearly distinguishable from those usually found at the beginning of British-type statutes. Their effect is felt throughout the whole of the legal system whereas the British-type

definitions have an effect for the most part only on the interpretation of the statute that contains them.

Their content is also much more general than that of certain British-type definitions that, as we have seen, are quite happy with simply mutilating the semantic field of known words by giving them a meaning that current usage does not. Let us see how the Robert dictionary defines the word «vente» (“sale”):

[TRANSLATION]

1. The exchange of goods for their price, the transfer of all ownership rights attached to goods to a buyer in return for payment; . . . 2. (Law) Contract by which one of the parties (seller) is bound and committed to transfer the ownership of a good and to deliver it to the other party [buyer (acheteur, acquéreur)] who is bound in turn to pay its price.

If one examines the definitions given in the two above-mentioned Civil Codes, it is easy to see that they do not depart from the current meaning of the word found in the dictionary. We could therefore label this a doctrinal definition, that is to say, a proposition that really defines a concept in keeping with current usage. Some might wonder what is the purpose of defining at all, if the current meaning is compatible with that found in the statute. Depending on the case, the purpose may be to confirm a doctrinal position, or a case-law position, or possibly to settle a doctrinal debate or resolve an uncertainty in the courts.

In the case of the Civil Code the purpose was to build, stage by stage, a legal system. The authors could have abstained from defining the words and simply left the users of the Code to refer to the current meaning of the words. Yet, the integrated and ordered countenance of the Code doubtless led the authors to do more than decree the rules — they also presented them. In the last analysis, articles 1472 of the Civil Code of the Province of Québec and 1582 of the French Civil Code indicate on what foundations the legal regime of sales has been built. The word “sale” could have been defined, without leaving the framework of sound lexicography, in terms of the consequences involved rather than the commitments that the contracting parties exchange. In fact, it could have been said that a sale is the transfer, in return for payment, of the ownership of a good from one person to another.

This variant clearly indicates that the drafter is not stripped of the necessary tools to make, if need be, a definition that reflects the in-

tention of the legislator, and is both a major contribution to the advancement of legal science, and a culturally acceptable guide for an analysis by the magistrate, as well as a contribution to the qualitative and quantitative enrichment of the language.

Let us add that the use of expedients usually linked to definitions is a worthwhile exercise if their purpose is to avoid the endless repetition of a very long title. Thus, in a long legislative text on recreation, it is desirable to avoid repeating the expression "Minister of Happiness, Pleasure and Sports" umpteen times. Therefore, a provision at the beginning of the Act could state, for example: in the present Act, Minister means the Minister of Happiness, Pleasure and Sports. However, in both the statutes under study, reference is made to two ministers, but only a few times: therefore, we preferred to mention their titles each time.

To conclude these few reflections on "definitions", we can only recommend moderation, and especially circumspection in the case of those who might be tempted to resort to the difficult art of definition in the body of a statutory text. It is abnormal to resolve a substantive question by using a definition.

Object

Each statute has an object that is its *raison d'être*. In our opinion, it is in the legislator's interest to indicate the goal sought in enacting a rule if he wants it to be clearly understood and generally accepted. The object of the legislation is most logically stated at the beginning of the statute. It has been said that stating the object of the statute within the statutory text itself has a doubtful legal value because this does not establish any rights or duties, nor is it very "efficacious". To this, we answer that the same thing holds true for all sorts of statutory provisions, beginning with definitions. In any event, while it is important that the legislator explain as it were what he is seeking to achieve by stating, for example, the object of the statute, this provision should not lead to what we have amply criticized in the preambles, that is political blather. In this regard, the case of the *Canadian Dairy Commission Act* presented a certain problem. Were we to indicate that the object of this statute was to establish the Commission and to make provisions for its operation? That already seemed obvious enough, given the title and first three sections of the Act. We chose instead to state in section 4, the object of the Commission itself, which is a much better indication of the real *raison d'être* of the statute.

Indeed, the justification for adopting legislation establishing an administrative agency is also the reason for having the agency itself.

As for the *Narcotic Control Act*, we have already pointed out that in the present statute there is no clear and succinct description of its purpose. We have remedied this situation in the new text, in spite of the usual objection that the very existence of the statute allows one to deduce its object.

We therefore suggest, to extrapolate, that the object of the legislation, whether it be a statute or regulation, always be stated, that this provision be placed at the beginning of the legislative text, and that, of course, it be clearly drafted.

Powers and duties

In the case of statutes establishing administrative agencies, stating the powers and duties or, if one prefers, the prerogatives and duties of the agency, is indicative of the goals pursued by the legislator and the style that he intends to infuse into the governmental activity taken over by the agency. Moreover, the powers and duties of the agency appear in the provisions that one needs to consult frequently and wants to be able to find easily and compare readily. This is why we advocate the grouping together of all these provisions in the following order. Firstly, the duties of the agency would be stated one after the other by order of decreasing importance. Then would follow the provisions granting the agency the powers or prerogatives required to acquit itself of its duties. Since these notions are important to present effectively the profile of the agency, we suggest that the drafter place this set of information at the beginning of the statute.

Regulations

Quite often a statute entrusts to the executive (government or public agency) the power to enact regulations for the application of the statute. It is a known fact that the regulations often surpass both in volume and in importance their enabling statute. In British law, all regulations are implementation regulations. Consequently, it is necessary that the existence and the legality of a regulation be based on an enabling provision in a statute. The enabling provision ought therefore to be clear as to the scope and limit of the power to make regulations. However, as the Standing Joint Committee of the Senate and

of the House of Commons on Regulations and Other Statutory Instruments states in Document No. 10 (10 February 1977, p. 10:59, par. 86),

It is unfortunately the case that many statutes of Canada do not on their face define clearly the extent of subordinate law-making power. And the problem is compounded by the views held by the Crown's lawyers and the parliamentary draftsmen of the effect of certain words or formulae when used in sections in Acts conferring subordinate law-making power.

Let us add that it is essential for the security of the legal system not to resort to enabling powers that are too vague or, worse yet, implicit. Too frequently, controversies arise with respect to the validity of a regulation. In consequence, care should be taken to ensure that the enabling power be clearly stated and that it provide sufficient guidelines to the author of the regulation to enable him to fully exercise his delegated power without running the risk of seeing his regulation challenged on the ground of illegality.

That is not to say that the contents of the regulations should be described in the statute down to the smallest detail. Our position regarding the abundance of details encumbering statutory texts has been sufficiently expounded previously and we do not intend to come back to this discussion here.

Significance of the section

While it is true that a well-thought-out draft of a statute requires, on the part of the author, an acceptable presentation of its elements, in addition to an internal organization of the statute, this implies that the constituent elements be set out in such a way that a reader can understand at one and the same time, the details and the whole of the text. Traditionally, the section has played the role of "divisor" of the different parts of a statute. In the absence of a recognized definition of a statutory section, we propose the following: a section is a container housing one idea. We believe that the section, being a unit of the legislative thought, provides the best developed structure to formulate the law.

But is there really an ideal length for a section? We do not believe so. At the very most, we hold to the criterion of conciseness. Thus, in the revised texts, nearly all of the sections are short. Moreover, the number of sentences is of little importance, although it is preferable to have as few as possible within one section. Our self-imposed objective of clarity limits their number to a maximum of three. Beyond that, the statute becomes unduly complex.

Should the sentence, in turn, be long, or should it be short? Instead of proposing an answer, it is preferable to rephrase this question so as to weigh the complexity of the rule to be formulated. Certainly, the short sentence is the most intelligible. However, there are no ready-made solutions, and situations do arise, such as with section 45 of the revised Act on dairy products, or section 12 of the revised Narcotics Act, in which the legislative thought requires a “flexible container”. Let us note in passing that these sections are enumerations of certain aspects of the regulatory powers conferred by the statute onto the Governor in Council. Despite the fact that these sections are very long, they are still very clear, thanks to the division in paragraphs.

Moreover, in section 13 of the revised Narcotics Act five sentences are needed to explain the judicial procedure to be followed in the case of a plea of not guilty; in spite of everything, this long section still follows the rules we have established since each paragraph contains only one or two sentences and expresses a complete idea.

Briefly, it is essential that the section be based on one idea and that this idea emerge freely from the section by simply reading the sentences. When a section is made up of several sentences, it is a good idea to individualize the sentences as much as possible, by beginning a new paragraph when necessary, for example, but without going beyond the three-paragraph limit in any one section.

The preceding arguments obviously do not take into account a major obstacle to the implementation of legislation that is composed of short sections. That is, specifically, the parliamentary procedure requiring that a bill be studied and approved section by section. In such circumstances, it could conceivably take an incredibly long time to cover the many readings required to enact a statute that is made up of hundreds of sections. Subsequently, what would happen when amendment to the statute would be in order? The problems — although minor — caused by the renumbering of the sections immediately come to mind.

Most certainly, our intention is neither to minimize these obstacles nor to hide them. We prefer to state, on the one hand, that the drafting of laws in French should conform to certain norms of presentation and, on the other hand, that the respect of these norms entails, on the level of parliamentary activities, certain procedural difficulties that must be resolved.

Finally, it is always necessary to keep in mind a few basic truths:

- The bill is subjected to the many conflicts and opposing views of the members of Parliament; the enacted version of the text most often carries the scars of these skirmishes.
- The statute is directed at all citizens and ought to present itself in a form that is easily understood by the majority.

Faced with these concrete facts, let us hope that the first group will butcher the texts as little as possible so that the second can better grasp their intentions.

Cross-references

When drafting a legislative text, one is often obliged to recall all or part of a passage that appears in another paragraph, another section, or sometimes even, in another statute. This situation arises especially when a complex provision is to be elaborated that introduces elements of one part of the text into another and it therefore seems impossible to juxtapose all the concepts in one simple sentence. In such a case, the drafter often resorts to using cross-references. In its most common form, the cross-reference begins by an elliptical statement of the type “. . . by virtue of section . . .”. Our position with respect to this technique is simple: it must be avoided as much as possible. In the revised texts, we have eliminated all internal cross-references, keeping only, of course, those which refer to other statutes. Obviously, it is not always possible to achieve this aim and it can even happen that a good cross-reference contributes more to the clarity of a text than a clumsy repetition. The important thing is to be able to strive for the ideal without losing sight of the particular needs of the text one is drafting. But, we must not forget also that, if a statute is structured properly, it is bound to have a favourable outcome, for this usually eliminates the need to resort to cross-references.

As far as the reader is concerned, to find one cross-reference in a section is considered a failing, to come across two cross-references is considered a fault, and to stumble over three, a failure!

There are sometimes quite a few cross-references to other statutes. For this reason it seemed helpful to us to insert in the index of each of the two statutes examined in this study a heading entitled “References to other statutes”. Thus the user can know at a glance what other statutes supplement the legislative ensemble created by the statute he is consulting. Our reflection on this matter has led us to

wish that this heading be used systematically in the index of each statute, even when the statute includes no references to other statutes. In the latter case, it would be sufficient to simply note "none". The reader would then immediately be aware of the extent of the applicable law.

4.

Problems of Interpretation

"Ejusdem generis": an example

According to the Honourable Mr. Justice Louis-Philippe Pigeon:

[TRANSLATION]

Each time one resorts to using an enumeration, one opens the door to this process: the courts are permitted to seek the category in which the enumerated terms can be listed and to limit the collective term to that which falls in this category.¹²

This is, of course, the "ejusdem generis" principle, which allows the judge to derive a common general category from a series, whenever possible. Sometimes it is necessary in the case of a long enumeration to derive from it such a category, thus allowing the exegetist to extrapolate an element that the drafter could not have foreseen. This always involves a very difficult and complicated process that opens the door to all sorts of controversies. It would seem advisable that the draft put in perspective a generic term rather than a meticulous enumeration. This would also avoid being caught in the constraining grip of the principle *Expressio unius est exclusio alterius*, especially when the cases of application are contained in an enumeration.

Section 2 of the present *Canadian Dairy Commission Act* provides us with a case in point for the application of these principles:

...
"dairy product" means milk, cream, butter, cheese, condensed milk, evaporated milk, milk powder, dry milk, ice-cream, malted milk, sherbet, or any other product manufactured wholly or mainly from milk;
...

Because of this it became necessary to revise these enumerations that are intended, as we know, to clarify the text for the citizen, but which most frequently only imperfectly copy the dictionary. Examples of this phenomenon are numerous.

In subsection 9(1) of the *Canadian Dairy Commission Act*, one reads:

. . . the Commission may . . . purchase any dairy product and package, process, store, ship, insure, import, export, or sell or otherwise dispose of any dairy product purchased by it; . . .

And in the *Narcotic Control Act*, section 2 reads thus:

. . . “traffic” means . . . to manufacture, sell, give, administer, transport, send, deliver or distribute . . .

It would be pointless to list all the examples found.

Diverging points of view

In the course of this study, the reader will no doubt have observed that we have often replaced, in the revised legislative texts, the actor with the action. Thus, in the proposed text on narcotics, «Nul ne peut avoir en sa possession un stupéfiant . . .» (“No person shall have in his possession any narcotic . . .”, subsection 4(2)) becomes, «La possession d’un stupéfiant . . . est une infraction . . .», section 3 (literally, the possession of a narcotic is forbidden). For the francophone mind, the action suggests the actor. (*Translator’s note*: The English version of the revised text retains the actor as the subject — No person shall possess a narcotic . . .)

Now, we are well aware that this type of reasoning would not appeal to an anglophone mind, accustomed in such circumstances to look for, and expect, a person. Because of this, an English version focussing on the thing rather than the person would impose something strange upon the anglophone, a sort of break with his mental approach. By a just turn of events, the francophone experiences an analogous malaise when subjected to a provision such as that of subsection 3(6) of the *Canadian Dairy Commission Act*:

Si quelque membre de la Commission est absent ou s’il est dans l’impossibilité d’agir, le gouverneur en conseil peut nommer, pour la durée et aux conditions qu’il prescrit, un remplaçant provisoire.

If any member of the Commission is absent or unable to act, the Governor in Council may appoint a temporary substitute member for such term and upon such conditions as the Governor in Council prescribes.

This is why we prefer having recourse to nouns, which favour the statement of a generality, as can be seen in the following revised text (section 16):

En cas d'absence ou d'incapacité d'agir d'un commissaire . . . (literally, in case of the absence or incapacity to act of a Commissioner . . .)

(*Translator's note*: The revised text in English reads — Where a commissioner is absent or unable to act . . ., thus adopting a verbal structure instead of using nouns.)

This type of modification stresses once more the fundamental differences between thought patterns from one language to another. The linguists Vinay and Darbelnet¹³ enlighten us on the processes inherent to English and French. In English, they explain, linguistic representation closely follows the concrete reality — this is called the «plan du réel» (reality) — whereas in French, the mind rises above the concrete reality to consider reality from a more general angle, a process referred to as the «plan de l'entendement» (understanding). Thus a number of drafting phenomena criticized in this study are not founded on language errors. Often the longest enumeration and the most tortuous definition have scrupulously respected the norms of grammar. It remains no less true that the finished product is not French, for it only copies as faithfully as possible the contents of an English original, its lexical dimension, and therefore its thought patterns.

On the interpretation level, that approach inevitably leads to failure, unless the French version of the texts is entirely rethought, taking into account, as we have done, the “thought patterns” proper to the French language and which ineluctably translate in terms of stylistics.

5.

Stylistics

What, then, is to be found in the very structure of the French language that demonstrates its preference for the process described by Vinay and Darbelnet as «plan de l'entendement» (understanding)?

By way of response, we can begin by defining a few tendencies inherent in the francophone mind, which will ultimately lead us to our point of departure, that is to say, the propensity of the French language to express itself by means of principles.

According to E. Legrand, [TRANSLATION] “. . . in French the noun and its group (article, adjective, preposition) tend to predominate over the verb and its group (pronoun, adverb, conjunction)”.¹⁴ This is a first indication of the difference between the French style and the English style, which favours, as we have seen, the verbal group. Another indication is the tendency for the francophone to use a generic term to qualify or express his thought, whenever possible. And finally, three centuries of Cartesian tradition have inculcated in francophones throughout the world the reflex of reasoning by proceeding from the essential to the subordinate.

One can gather from these tendencies that the formulation of the statute conforms to a protocol of expression that is sometimes as implicit as explicit, and which involves, among the other elements of style, syntax, verb tense and mood, the active, passive and reflexive voices, the use of the negative, capital letters, punctuation, etc.

A rapid survey of the elements that are characteristic of French stylistics will allow for an easier understanding of the rules according to which we have revised the texts of the statutes under study.

Syntax

- The simple sentence

In modern French, despite the great variety of syntactical structures available, legislative drafting would indeed benefit by favouring above all the simplicity of the most elementary syntax:

subject + verb + object.

It is not always easy to use this framework. Additional pieces of information must often be grafted on it, thus hindering the simplicity of the structure. In attempting to revise the two statutes, we have been motivated by this goal of simplicity; the large number of simple sentences in the revised texts attests to the general effectiveness of this technique.

- The inversion of the sentence

For practical reasons, it is sometimes necessary to invert the order of the elements in a sentence. The following examples illustrate this clearly. When the subject of the sentence is an enumeration, for example, or if the subject is supplemented with an explicative subordinate clause, it is clearer to indicate first of all what the action consists of. Thus, one reads in section 28 of the revised text entitled, "National Dairy Products Commission Act":

Sont crédités au compte

- a) les deniers perçus . . .
- b) les droits des permis . . .
- c) les prêts consentis . . .
- d) le montant payé . . .

(*Translator's note*: The same inversion applies in English:

There shall be credited to the account

- (a) moneys received . . .
- (b) licence fees . . .
- (c) loans made . . .
- (d) amounts paid. . .)

Likewise, in the second paragraph of section 4 of the revised text entitled, "Narcotics Act", one reads:

Est assimilé à un stupéfiant aux fins du présent article, toute substance que le trafiquant prétend ou estime être tel.

(*Translator's note*: The English version does not require this kind of inversion:

For the purposes of this section a narcotic includes . . .)

Notwithstanding, in an inversion greater attention must be taken to ensure that adjectives, participles and verbs agree with their respective qualifiers.

- The personal pronoun as object

Imitation of the English language drafting style has too often resulted in a certain distrust of the personal pronoun. Still, it is a very practical tool in French that is often used to recall notions that have already been mentioned. We have thus used these pronouns liberally whenever it seemed opportune:

S'il le reçoit alors que le Parlement ne siège pas, il le dépose dans les quinze jours de séance qui suivent. (Section 38 of the revised text entitled, the "National Dairy Products Commission Act")

(*Translator's note*: The English version of the revised text reads — If *he* receives *it* while Parliament is not sitting, *he* then lays *the report* within the first fifteen days of the next sitting.)

The drafter ought therefore to take care not to allow the example set by the English language to deprive him of a tool that is particularly precious to the French language.

Verb tenses

The statute presents a special narrative genre in which the legislator either grants the citizen the permission to do something or edicts a prohibition, or abolishes this permission or prohibition or, yet again, establishes another administrative mechanism of the State. Unless there is provision to that effect, the statute is not limited in time, which supposes a wording that is conducive to project this timeless character. Of all the verb tenses, only one gives this impression of timelessness — the present indicative.

Therefore, we advocate the use of the present indicative in French statutory texts. Contemporary English drafters are also adopting this technique. Indeed, according to Elmer Driedger, “enacting verbs should be in the simple present tense”,¹⁵ since the statute is considered as always speaking.

Of course, other verb tenses are also useful at times; in fact, how does one express the anteriority or posteriority of an act, of a procedure, without resorting to the future or the perfect tense? It is not a matter of eliminating these tenses but simply of determining when they should be used. The future tense indicates that certain facts should or might follow the action mentioned in the main rule provided for in the sentence. The past tense indicates that an action must have taken place if the rule is to be applied. The present tense amounts, among other things, to a command. In the revised text entitled, “National Dairy Products Commission Act”, section 38 reads:

Le ministre de l'Agriculture dépose le rapport au Parlement dans les quinze jours qui suivent sa réception.

The Minister of Agriculture lays the report before Parliament within fifteen days after receiving it.

And section 44:

Le comité se réunit à la demande de la commission.

The Committee meets at the request of the Commission.

The imperative quality of the present indicative used in these sections is obvious.

This meaning of the present indicative is often found in common expressions: «Vous placez cela ici, vous ôtez cette caisse de là . . .» (You put this here, you remove this box from over there . . .). When, using the present indicative, the legislator declares that you “do” something, the law considers that you are obliged to do it. If you don’t do it, your attitude is not “legal”. Whence the sufficiently clear imperative nature of the verb. However, this rule is not always automatically transposable into English.

The verbs «pouvoir» (may) and «devoir» (shall, must)

In all the texts that impose an obligation or grant a power, an actor and an action are necessarily involved. In order to avoid all possible ambiguities, it is advisable to always indicate clearly what the actor must do or what he may do. The present indicative, due to its prescriptive value, expresses very well, as we have seen, that which he *must* do. However, to express that which he *may* do, the verb «pouvoir» should be used. (*Translator’s note*: «Pouvoir» is the infinitive of the French verb meaning “may”, “can”, “is able to”, etc.)

On occasion, the verb «devoir» may be used to bring to the text a completely valid element of precision since, obviously, the present indicative does not always have this prescriptive value. (*Translator’s note*: «Devoir» is the infinitive of the French verb meaning “must”, “to have to”, “to be obliged to”, etc.) It is often only descriptive, particularly in a subordinate clause, as in the second paragraph of section 38 of the revised text entitled, “National Dairy Products Commission Act”:

S’il (le ministre) le reçoit (le rapport) alors que le Parlement ne siège pas, il le dépose dans les quinze jours de séance qui suivent.

If he (the Minister) receives it (the report) while Parliament is not sitting, he then lays the report within the first fifteen days of the next sitting.

Here, the first verb «reçoit» (receives), is descriptive and the second, «dépose» (lays), prescriptive.

In addition, one must guard against establishing an absolute equivalence between «pouvoir» and the auxiliary English verb “may”, or between «devoir» and the auxiliary “shall”. It often happens that the terms do correspond; nevertheless, their mere presence in an English

text ought to raise in the translator-drafter's mind a salutary doubt and, by the same token, ensuing vigilance.

*The active, passive and reflexive voices*¹⁶

[TRANSLATION]

Principles ought to be stated in the form of rules formulated in the active voice.¹⁷

This legislative drafting style is undoubtedly interesting, for it simplifies things by clearly indicating, according to the structure of the French sentence, who carries out the action expressed by the verb. However, the passive voice cannot be completely eliminated from statutes, for it can be useful, and even necessary at times. Because the passive construction is not as common or as direct as the active construction, it sometimes brings about a certain ambiguity as to who is the agent in the sentence.

It is indispensable that the drafter always ask himself who is acting in the sentence he is writing. In their treatise on the language of the law, Souriou and Lerat¹⁸ put forward three grammatical categories that we take up as ours, illustrating them with two examples taken from the revised text entitled, "National Dairy Products Commission Act", and a third taken from the authors.

Incomplete passive constructions where the object of the agent is not expressed:

Une Commission . . . est créée.

A . . . Commission is established.

Passive pronominal constructions in which the action expressed by the verb is reflected on the subject:

La commission se donne les règlements . . .

(*Translator's note:* A literal translation would read "The Commission gives itself internal rules." The English draft, however, reads: The Commission makes such internal rules as are necessary for its operations.)

Impersonal transformations, where a sentence begins with the subject «il», followed by a passive verb:

. . . et qu'il a été fourni à l'accusé une occasion de présenter une réplique et défense complètes . . .

(. . . and there has been provided for the defendant an opportunity to present a full reply and defence . . .)

In the revised versions of the “National Dairy Products Commission Act” and the “Narcotics Act”, we have avoided using this last category, as we do not recommend this type of transformation. The main danger lies in the fact that the reader may not be able to discover who is the agent responsible for the action, whence the ambiguity of the passage and the need for an exegesis.

It is obvious that the use of the passive voice is very useful when the context demands it; this was particularly the case with sections 28 and 29 of the revised text of the “National Dairy Products Commission Act” where the subjects and verbs were many and long:

Sont crédités . . . ou payés . . .

There shall be credited . . . (or) . . . paid out of

The inversion is fully justified, provided that the role of the agent is understood by everyone. The passive voice is a very valuable licence in legislative stylistics. Nevertheless, it has its price for it carries with it the constraining obligation of always having to designate the agent.

Finally, it would be unthinkable to end a discussion on the passive voice without mentioning the influence of the English texts. For everyone knows that the passive is used extensively in the English language, and more often than in French.

The only effective remedy, when a French text must have the same substance as the English, is to ensure that the francophone drafter can take an objective stance regarding the English text so as to shape the contents in a way that is more suitable to the French language.

The negative

As a general rule, the use of positive expressions should always be preferred. The reasons for this are quite simple:

- a positive expression is easily understood;
- it is the most direct, as well as the simplest and the shortest form of expression.

Even when one feels that a negative is warranted, it is often possible to use words beginning with a privative prefix, for example, «in-», «dé-», «dés-», and sometimes «mé-», as in the terms: «incompatible, dégrever, déséquilibre, méconnaître». (*Translator's note:*

Equivalent terms in English would be *incompatible*, *disencumber*, *disequilibrium*, *misjudge*.)

Although the use of positive expressions is recommended, the negative can sometimes be very beneficial to the legislative style, for it brings to the text a play of words¹⁹ that posits certain implicit questions:

Le ministère public n'est pas tenu, sauf à titre de réfutation, de prouver que l'exception . . .

At no time in the proceedings is the prosecutor required, except by way of rebuttal, to prove that an exception . . . (Second paragraph of section 12 of the revised text entitled, "Narcotics Act")

Likewise, the legislator can answer by way of restrictive constructions a question that springs to mind:

En l'absence de preuve contraire, ce certificat constitue une preuve des déclarations qu'il contient, sans qu'il soit nécessaire d'établir la qualité d'analyste du signataire ni l'authenticité de sa signature.

In the absence of evidence to the contrary, the certificate is proof of the statements contained therein and no proof is needed regarding either the qualification or the signature of the analyst. (Second paragraph of section 14 of the revised text entitled, "Narcotics Act")

Our remarks aim at proscribing, as far as it is feasible, the use of the negative. All the more should the use of the double negative, a veritable pitfall of drafting, be proscribed, for such a formulation imposes a mental gymnastics on the unsuspecting reader who may be led to believe that such a statement is equivalent to an affirmative expression. For, even if some double negatives are equivalent to affirmatives, such is not the case in the following example:

. . . et si l'accusé ne démontre pas qu'il n'était pas en possession du stupéfiant pour en faire le trafic. . .

. . . and if the accused fails to establish that he was not in possession of the narcotic for the purpose of trafficking . . . (Section 8 of the *Narcotic Control Act*)

From the standpoint of the psychological and pedagogical elements which are necessary for a successful statute, it is preferable to use an affirmative expression. It renders the constraint "less intolerable", to use a double negative.

The singular and the plural

To guard against the asymmetrical structure of their languages, jurists of those countries where the legal system is inspired by the

common law, most often take care to avoid as much as possible the careless mistakes that come about as a result of using words written either in the singular or the plural. To chase away a looming spectre, the most common legislative incantation consists in putting into an Act concerning the interpretation of statutes, a provision such as:

Words in the singular include the plural, and words in the plural include the singular.²⁰

Even if this rule does not ensure uniformity in the texts, it at least has the merit of bringing everything to the same level. Besides, in a legislative system where it is important to follow the written text to the letter, one can well understand that the legislator would be concerned with making provision for all possible interpretations. Be that as it may, this inclination to include all possible hypotheses rapidly brings about uncomfortable situations. Certain drafters are not at all concerned with numbers and therefore they sometimes use the singular, sometimes the plural, while others tend to favour one of the two forms to the exclusion of the other, thus bringing the language to accept “forced” usages. And some drafters prefer to use the singular unless grammatical rules impose the plural (e.g., «les gens», literally the peoples).

While insisting on the freedom to choose that is the drafter’s privilege, we favour the singular wherever possible.

The masculine and the feminine

As with the problem of number, the problem of gender is a frequent one. There again the legislator has foreseen all eventualities and provided that:

Words importing male persons include female persons and corporations.²¹

Once again, it is to be noted that, instead of using logic, everything is brought to the same level. However, this time, borrowing from a legislative provision written in English cannot be accepted as easily because, contrary to English, which bears only few references to grammatical gender, French divides all nouns into two grammatical categories bearing respectively the labels of masculine and feminine. On the linguistic level, these categories have nothing to do with sex; they only serve to arrange words in series. The following example illustrates the difference between the dynamics of the English and French grammars:

English: “The trustee may at *his* discretion pay . . .”

French: «Le fiduciaire peut, à *sa* guise, verser . . .»

The respective connotations of "his" and «sa» are not the same because the possessive adjective "his" indicates that the "trustee" is a man, which is a potential source of ambiguity for the anglophone reader. In French, «sa» serves to indicate possession but it does not give us any indication as to the sex of the trustee. In relation to this example, it should be remembered that during the past few years, the anglophone world has been going through a semantic revolution brought about by the egalitarian preoccupations of men and women. Because of this, one often reads in American texts such details as, "his or her discretion" or even "his/her discretion" because anglophones no longer feel comfortable with the traditional operation of the language. Through the influence of the many texts translated from originals in English, the francophone world risks being caught up in these outside "sexist" preoccupations that do not conform with the spirit of the French language and are thus useless in the present context. This is a difference which should be taken into consideration when translating into French.

The indefinite article

When a French legislative text is a translation of an English original, an impoverishment of the quality of the French can generally be noticed. One runs up against a plethora of terms such as: «Tout(e), quelque, quelconque, etc.» (All, any, etc.):

Doivent être crédités au Compte . . . en vue de stabiliser le prix de *quelque* produit laitier.

There shall be credited to the Account . . . for the purpose of stabilizing the price of *any* dairy product. (Subsection 15(2) of the *Canadian Dairy Commission Act*)

. . . en vue de l'exercice de l'un *quelconque* des pouvoirs de la Commission . . .

. . . for the purpose of exercising *any* of the powers of the Commission . . . (Subsection 16(1) of the *Canadian Dairy Commission Act*)

It is possible to demonstrate, by means of a dictionary, that these words are well and truly French. However, the finished product lacks elegance.

To express the indefinite in French, there is no need to use any modifiers, for the indefinite article carries with it the idea of an indeterminate number and expresses this elegantly. Thus it suffices to write «le prix d'un produit laitier» (the price of a dairy product) and «l'exercice d'un des pouvoirs» (the exercise of (any) one of the powers).

Capital letters

In a bilingual environment, a French text is often compared to the English version, and thus it becomes necessary to underline the main rules governing the use of capital letters in both languages. It is a known fact that capital letters are not used in French as often as in English or German, even if the texts are equivalent in terms of contents.

The spelling of adjectives is a classic example taken from the different rules of grammar involved. In principle, French favours the use of small letters²² as opposed to the capital letters adorning English texts. In this regard, it suffices to compare «la Commission canadienne du lait» with “The Canadian Dairy Commission”.

Ordinarily, a capital letter is used in French to designate the proper names of religious or political organizations, learned societies or orders of chivalry, and so forth. However, this usage is hardly absolute. In fact, usage has been rather flexible, but in order to conform to the norms in effect at the federal level, we have preferred not to use the capital «M» in «ministère» in the revised text, thus capitalizing only the first letter of the patronymic part of the title. (*Translator's note*: The equivalent of capital “D” for a designated government department.) Thus, one sees written: «le ministère de l'Agriculture, le ministère des Finances» (literally, the ministry of Agriculture, the ministry of Finance). Moreover, one writes: «la Commission nationale des produits laitiers» (literally, the National commission of dairy products); but in context this entity is designated without capital letters: «la commission» (the commission).

Even though the use of capital letters does not, perhaps, have a definitive bearing on the legal effects of the statute, it is a minor detail that allows francophone citizens to feel “at home” with “their” statutes.

Punctuation

Punctuation is a formal aspect *par excellence* of legislative drafting and, in spite of the rather limited nature of the topic, it is necessary nevertheless to underline certain important details here. As with the use of capital and small letters, punctuation produces a graphic effect that complies with certain linguistic norms, which are not necessarily the same in English and French, whence another source of interference.

The most obvious abuse of this is that of the semi-colon, which is used in a section to separate the many elements listed; at times, the conjunction "and" is also added at the end of the penultimate line. This process is borrowed from English and gives the following result:

La Commission peut
a) nommer les fonctionnaires; et
b) prescrire les fonctions . . .

The Commission may
(a) appoint officers; and
(b) prescribe the duties . . .

This type of punctuation should be avoided, since the French language favours the comma over the semi-colon in such cases. The above provision would thus read:

La commission peut
a) nommer les fonctionnaires,
b) prescrire les fonctions . . .

The Commission may
(a) appoint such officers,
(b) prescribe their duties . . .

The use of the conjunction «et» (and) is also to be avoided in any enumeration.

The form of the revised texts of the two statutes under examination departs considerably from that of the originals. A detailed comparison of the punctuation in the texts is thus not possible. However, such an analysis would very likely reveal that the most controversial punctuation mark is the comma. For it is the comma, much more so than the other marks, that determines the meaning of a part of a sentence in relation to the other parts. For this reason, its use gives rise to the most lengthy discussions.

Now, if one considers first the role of the comma in the sentence, that of marking a pause, and then the particular accentuation of the French sentence that distinguishes it from the English, it must be recognized that the place of the comma in the French sentence cannot always be identical with that in the English sentence. The place of commas in the present English and French texts of federal statutes is nearly always identical. The influence of the English text over the French text is undeniably clear.

Connective words

In a statement on the articulation or the cohesiveness of the paragraph in French, Vinay and Darbelnet explain the fundamental role played in contextual discourse, by certain words called «les charnières» (connective words). These group together a series of linguistic realities such as conjunctions, adverbs, phrases, relatives, copulas and so forth. An articulate language, such as French, attaches significant importance to the role of connective words, as can be seen in the examples drawn from the revised text of the statutes under examination:

L'objet de la commission est, *d'une part*, de permettre aux producteurs de lait de vache . . . et, *d'autre part*, d'assurer aux consommateurs . . .

The object of the Commission is twofold: *first*, to allow . . . producers of milk from cows . . .; and *second*, to provide consumers . . . (Section 4, "National Dairy Products Commission Act". Italics added.)

. . . la commission peut faire ce qui est nécessaire . . . à la réalisation de son objet, *notamment*

a) . . .

b) . . . etc.

. . . the Commission may do whatever is necessary . . . to carry out its object, *especially*:

(a) . . .

(b) . . . etc. (Section 6, "National Dairy Products Commission Act".

Italics added.)

La présente loi a pour objet, *d'une part*, l'interdiction de la possession, du trafic, . . . et, *d'autre part*, l'autorisation de certaines exceptions à cette interdiction.

The object of this Act is twofold: *first*, to prohibit possession of a narcotic, trafficking in narcotics, . . .; and *second*, to provide for certain exceptions to such prohibition. (Section 2, "Narcotics Act". Italics added.)

These linguistic marks — «*d'une part*», «*d'autre part*», «*notamment*» (*first*, *second*, *especially*), — are so many indicators in the discourse that the francophone can recognize and with which he can identify. Quite often, the only justification for using such terms is simply that it is a recognized proper usage in French; and sometimes this has nothing to do with another version of the same text in another language. Vinay and Darbelnet put translators on guard against the difficulties caused by the insertion of connective words in their texts:

[TRANSLATION]

When translating a legal or diplomatic text, for example, it would be betraying the French reader to omit connective words, which punctuate

the flow of the statement: but given that connective words are often very different from one language to another, it will be necessary to bring the users to accept the explicit or implicit segmentation of statements in texts that are customarily considered intangible.²³

Redundancies

On numerous occasions, the formulation of statutes is weighed down by the repetition of almost identical words, which are used under the pretext that they add an element of precision to the text. However, upon analysis one sees that these terms often hide an ambiguity in the conception of the text, or a dubious need for justification of the first term used, or again a servile translation from an English original.

Indeed, the *doublet*, that is, a pair of synonymous terms used to designate a single thing, is a very common occurrence in English texts. This form of alliteration stems from an English literary tradition that dates back to Chaucer, Spencer and others. To a much lesser degree, if one looks at the expression «nul et non avenu» (null and not having occurred), the same usage is found in French. But herein lies the crux of the problem: English delights in a usage that is, generally speaking, repugnant to French. Thus, when we read in subsection 4(4) of the *Canadian Dairy Commission Act* «actions, poursuites ou autres procédures» (“actions, suits or other legal proceedings”), «intentées ou engagées» (“brought or taken”), we preferred limiting the expression to its strict minimum: «Dans une poursuite . . .» (In a prosecution . . ., section 50, revised text) and «La commission peut intenter une action en justice . . .» (The Commission may take . . . legal proceedings . . ., section 11, revised text).

*The term and the institution*²⁴

The language of the law distinguishes itself from other specialized languages by the very special link that it establishes between the institution and the term used to describe it. Such is the case with «corporation», a word that draws its meaning from the business activities of the country. Proscribed by purists and used more than ever by practitioners, the *corporation* is the archetype of a term whose meaning is deeply embedded in Canadian institutions. Such is also the case with other Canadianisms of disputable quality such as «fiducie» (trust) and «capital-actions» (shares of capital stock).

In this respect, the recent amendment of the French version of the *Canada Business Corporations Act*, now entitled in French *Loi sur les sociétés commerciales canadiennes* instead of *Loi sur les corporations commerciales canadiennes*, is an indication of the war of words raging between the upholders of a French terminology and the advocates of terms compatible with the institutions. Now, the heart of the matter rests on the up-to-now poorly-understood notion of the connection between language and institutions. In French terminology, it is possible to substitute the word «embrayage» for the anglicism “clutch”. This is due to the fact that there is no such thing as a “philosophy” of the “clutch”. On the other hand, the concepts of «société» in civil law, and that of «corporation» in common law are based on a doctrine, and they only very superficially resemble one another. Furthermore, automobile terminology does not carry any normative effects on societal behaviour, and it does not aim to establish relationships among individuals. At the other end of the continuum, «société» and «corporation» represent different case situations, as they are both representative of socio-economic and legal organizations.

It must therefore be clearly understood that terms themselves feed on those institutions in which they evolve for their meaning. The strongly felt confusion caused by certain provisions of the *Canada Business Corporations Act*, such as section 15, comes as a result of this elementary fact:

La société a, sous réserve de la présente loi, la capacité d'une personne physique.

And in the English version:

A corporation has the capacity and, subject to this Act, the rights, powers and privileges of a natural person.

Finally, our present mandate is not to resolve the litigious question of the validity of these terms. On the other hand, we hope that jurists and socio-linguists will collaborate so that one day drafters and translators may be guided by enlightened solutions.

*Fuzzy notions*²⁵

In reading the revised versions of the two statutes, one cannot help but wonder about the meaning of certain expressions such as: «bonne qualité» (quality), «heure raisonnable» (reasonable time) or «aide raisonnable» (reasonable assistance). How is one to determine what constitutes «bonne qualité», «heure raisonnable» or even «aide

raisonnable»? Of course, we do not intend to answer this question because it is obvious that the legislator wanted to leave these things to judicial discretion. Such is the case with a large number of legal expressions on which the written law depends; let us only mention, among others, the notions of «ordre public» and «bonnes mœurs». The difficulty that must be emphasized here stems from the nature of these fuzzy notions. In civil law the concept of «bon père de famille» (prudent administrator) is a fuzzy notion and does not necessarily correspond to anything in common law.

For its part, English usage readily accepts such expressions as “reasonable man”, “reasonable hour”, and so forth, since these concepts are compatible with the English way of conceiving and stating the law. But these are nonetheless fuzzy notions even in English, and when they are literally translated into French, these words do not correspond to anything in particular.

Here we touch upon a serious problem of legal translation and of the compatibility of two official versions of the same statute. The ideal solution, often impossible to adopt, would be to resort to fuzzy notions in both French and English when the statute is conceived.

Legal and linguistic interference

In drafting legislation in two official languages, one confronts not only two idioms, but two styles of legal expression that are traditionally distinct. It is not surprising then that legal and linguistic interference arise from the contact of these two cultures. However, the problem still remains. If the will of the nation is that a system express itself by means of two languages, whatever their differences, how is one to filter out that which interferes with the system, that which contaminates these two working tools? A brief analysis of certain problems will allow us to put in perspective the nature, whether it be legal or linguistic, as we have written above, of this interference.

Sometimes it is useful to dissociate these two types of problems the better to analyse them, for quite often legal interference appears in conjunction with linguistic interference, and vice versa.

Linguistic interference often takes the form of an anglicism in French, or a gallicism in English. This type of interference may be lexical or structural. By way of example:

anglicism: «ajustement» des comptes (adjustment of accounts), in place of «*rectification*» or «*régularisation*»;²⁶

gallicism: “jump” or “leap to the eyes” («sauter aux yeux»), in place of “to be self-evident” or another expression of this nature.²⁷

Legal interference comes as a result of giving a term a meaning that is foreign to the legal system in which it is used. By way of example:

«intérêt» (interest) in place of «droit»,
«considération» (consideration) in place of «cause», «contrepartie»,
«rémunération», «moyennant finances», etc.

The texts abound with examples that are even more complex, for legal and linguistic interference often overlap: indeed, this is the real crux of the problem. Few jurists are able to resolve a linguistic dispute and fewer still are the linguists who are able to understand an exercise in comparative law.

6.

Conclusion

It is not our intention, as we conclude this study, to broaden the scope of the discussion unnecessarily by including topics which, while fascinating, do not have any direct relationship to the practical experience that has been the basis of our theoretical exposition. However, let us recall a few basic concepts.

A statute should not be presented as a jumble of rules that are thrown onto paper without concern for their relative importance or the order that might be attributed to them. The structure of the statute, when conceived seriously, is in itself a valuable indication of the importance that the legislator ascribes to each of the parts of a text and of the logical connections that are to be established between the pro-

visions. Whence the necessity to set out a plot, a rigorous plan for the drafting of a statute, or even a regulation.

Constant care must be taken to make use of all possible elements so that the law is generally understood by all citizens. It must never be forgotten that the law is imposed on everyone and that, out of his concern to be effective, the drafter should consider himself to be the principal person responsible for the good or poor understanding that citizens will have of his text. Statutes should be short and should comprise short sections, short sentences and simple words.

From the initial stages of legislative planning, it is important to foresee the consequences of the rule enacted. This requires that an effort be made to try to imagine, by a good prospective analysis, the kind of reception the text will get, first of all, from the citizen, then, from the courts, and last but not least, from the Government, whose influence is not to be neglected. This equally requires that the text, once it has been set out, be looked over to verify mainly those aspects of the legislation which are intellectual (orientation), legal (insertion of the rule in the body of positive law and its compatibility therewith), and technical (cross-references, transitional provisions, internal coherence).

In order for the rule to be accepted, it must be, above all, in keeping with the customs and cultural reflexes of those persons to whom it is addressed. This is why it is necessary and indeed urgent to delay no longer the basic research on the essential characteristics of bilingual legislation, especially if, when translating from one language to another, one equally passes from one culture to another and one legal system to another. The traditional techniques of legal translation are evidently inadequate for transposing into French a rule conceived in English by anglophones, in accordance with English cultural patterns, and destined to be inserted into a British-type legal system. The official equivalence of the French version and its English original appears to be more and more of a dream aimed at creating an illusion that the French culture can, without difficulty, accommodate itself to rules that are foreign to it in respect of their intellectual basis, their expression and their methods of interpretation. Let us hope that an in-depth study will make it possible to suggest to the Canadian legislator a method of planning and interpreting legal rules that is thus more adapted to Canadian needs.

Parallel drafting is a commendable effort in that it shows greater respect for cultural specificities. Nevertheless, bilingual legislation im-

plies that the two texts should be linked to each other, at least by the effects sought. The coexistence of two texts requires a minimum of compromise, especially as to the structural parallelism of the texts. Since anglophones and francophones do not have the same conception of how reality is pieced together, of how texts are laid out, particularly statutory texts, or of the length of sentences and sections, a compromise must be arrived at when the drafters are ready to adjust and adopt the layout and structure of their respective texts.

Although our first goal was not to revise in parallel the two statutory texts, an English version of these two drafts has been prepared and it appears side by side with the French, but only to enable the English reader to understand the French text. The reader, whether francophone or anglophone will thus be able to judge the degree of acceptability of an English text that derives its structure and organization from a French model. Surely, it is at the level of the structure of the statute and its organization into sections that a compromise should be arrived at between the two cultural communities, their jurists and their drafters. The time has come to cast a new look at the form Canadian statutes will assume in the decades to come.

V

A Method of Working

Each drafter has his own method of working. The greater his experience, the more refined and rigorous his method of working will be, and the more jealously he will defend it. Our intention here is not to impose a particular method of working. Instead, we wish to bring drafters, especially those who are beginning in this profession, to reflect on the lessons we have gained from our research and to draw from these the elements that are likely to be of some help to them in perfecting their own methods of working.

Firstly, we present a few words of advice or suggestions aimed at simplifying the steps involved in the conception and elaboration of a statute. There follow, two review control sheets that allow the author to methodically survey the finished text and make an inventory of the essential elements of his work, on questions of both substance and form.

These control sheets are tools which, according to our experience, eliminate oversights and errors. More importantly still, they force the drafter to refine his method of working and thus, to produce legislative texts of a higher quality.

A Few Words of Advice or Suggestions

1. It is difficult to catch the spirit of a statute by way of translation. It is better to resort to a parallel drafting of the two versions.
2. The notions conveyed by French legal vocabulary often differ from those conveyed by English legal vocabulary; therefore it may sometimes be necessary to adapt the terminology to the given legal context.

3. The statute is a text that requires a specific structure. In French, the most usual, and without doubt the most practical structure, is that which allows the reader to progress from the essential to the subordinate.

4. Before embarking upon the drafting of a statute, a schematic plan should be prepared to ensure a logical unfolding of the provisions.

5. The drafter should avoid enumerating all the cases in which the statute is to be applied. The French language requires that one resort instead to the enunciation of a principle from which one can deduce the various cases in which it applies.

6. It is preferable to state the law in terms of positive rather than negative principles.

7. A single title suffices. It should be short. Its role is to identify the text.

8. Definitions should be avoided.

9. It is desirable to state the object of the statute and to do so at the beginning of the text.

10. It is advisable that each section contain only one idea.

11. Cross-references are to be avoided unless they are essential to a good understanding of the text. A slightly longer section is always preferable to a shorter section containing one or more cross-references.

12. The simplest syntactical forms are the best.

13. In a section, it is better to use short sentences without incidental clauses than to use long and complex sentences.

14. There is a general preference in the French language for the substantive rather than the verbal form.

15. When versions of a text are being prepared in French and English, one should not forget the resources of the French language, particularly the object personal pronouns «y» and «en».

16. To express thoughts in a cohesive and articulate manner, the drafter should resort to connective words, such as: «or», «car», «d'une

part, d'autre part» . . . for which there is not necessarily any equivalent in the English text.

17. The general use of the present indicative is preferable in all respects.

18. While the verb «pouvoir» (may) is necessary in most cases in French to state that one is granting a power, the imperative is rendered simply by using the present indicative.

19. It is preferable to use the active voice.

20. Double negatives should be proscribed.

21. The singular is often employed in French where the plural is used in English.

22. In French the masculine and feminine genders are, first and foremost, grammatical categories. Any indication of sex is secondary.

23. One should avoid systematically translating “each — every — any” by «tout — toute», since the French indefinite article can be used.

24. Traditional restraint in the use of capital letters in French should be respected.

25. It is advisable to adhere to the criteria of French punctuation. An error in punctuation can change the meaning of a sentence.

26. Synonyms should be proscribed.

27. *Doublets* or *triplets* should be proscribed.

28. Systematic verification of substance and form guarantees the quality of the final product.

To provide the sponsor
with the possibility of
doing “de jure” what he
wants to do “de facto”.

LEGISLATIVE DRAFTING — REVIEW CONTROL SHEET

Substance

p. 1 of 3

TITLE OF DRAFT BILL:				Name of legislative drafter:	
Name of reviewer:				Date of review:	
Instructions: 1) Read entire draft for each review point or group of points.					
2) Indicate sections requiring action and the proposed corrections or action recommended.					
Attach explanatory note if necessary.					
#	Review points	Sections requiring action	Corrections/Action recommended		
1	<i>Object of the bill</i> — clear, precise, too broad, too restrained, one section only?				
2	<i>Harmony with the law</i> — constitution, common law, civil law, related acts, interpretation act, evidence act, Bill of rights, international law.				
3	<i>Harmony with jurisprudence</i> — “stare decisis” (judgment “per incuriam”).				
4	<i>Discrimination</i> — vested rights, retroactivity.				

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LEGISLATIVE DRAFTING — REVIEW CONTROL SHEET

Substance

p. 2 of 3

TITLE OF DRAFT BILL:		Name of legislative drafter:	
Name of reviewer:		Date of review:	
Instructions: 1) Read entire draft for each review point or group of points. 2) Indicate sections requiring action and the proposed corrections or action recommended. Attach explanatory note if necessary.			
#	Review points	Sections requiring action	Corrections/Action recommended
5	<i>Coercive measures</i> — statutory offences, criminal acts (“mens rea”).		
6	<i>Interpretation</i> — definitions really necessary? no substantive law? All words in the bill are easily understandable in their context?		
7	<i>Her Majesty</i> — rights of, property of, agent of, contracting on behalf of Her Majesty or on one’s own behalf.		
8	<i>Enumeration</i> — rules “ejusdem generis” and “expressio unius est exclusio alterius”, to proscribe from definitions.		

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LEGISLATIVE DRAFTING — REVIEW CONTROL SHEET

Substance

p. 3 of 3

TITLE OF DRAFT BILL:			
Name of reviewer:		Name of legislative drafter:	
Instructions: 1) Read entire draft for each review point or group of points. 2) Indicate sections requiring action and the proposed corrections or action recommended. Attach explanatory note if necessary.		Date of review:	
#	Review points	Sections requiring action	Corrections/Action recommended
9	<i>Special provision vs. general provision</i> — Necessary? Legal effect?		
10	<i>Regulation</i> — broad, restrictive delegation, in harmony with object of the bill?		
11	<i>Cross-references</i> — precision; to another section: essential? double cross-reference to prescribe: to another law: present or future?		
12	<i>Transitory provisions</i> — immediate or deferred commencement? or subject to specific act or condition?; is old law continuing? conflicts?		

*To communicate to the
citizen a message easy
to understand: direct,
clear, concise, elegant.*

LEGISLATIVE DRAFTING — REVIEW CONTROL SHEET

Form

p. 1 of 4

TITLE OF DRAFT BILL:		Name of legislative drafter:	
Name of reviewer:		Date of review:	
Instructions: 1) Read entire draft for each review point or group of points. 2) Indicate sections requiring action and the proposed corrections or action recommended. Attach explanatory note if necessary.			
#	Review points	Sections requiring action	Corrections/Action recommended
1	<i>Plan</i> — logical development, sufficiently concrete, balance of parts.		
2	<i>Formulation</i> — from general to particular.		
3	<i>Title</i> — concise, descriptive, subtitles.		
4	<i>Section</i> — one idea only, one sentence only. If more than one sentence: subsection or paragraph.		

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LEGISLATIVE DRAFTING — REVIEW CONTROL SHEET

Form

p. 2 of 4

TITLE OF DRAFT BILL:

Name of legislative drafter:

Name of reviewer:

Date of review:

Instructions: 1) Read entire draft for each review point or group of points.

2) Indicate sections requiring action and the proposed corrections or action recommended.
Attach explanatory note if necessary.

#	Review points	Sections requiring action	Corrections/Action recommended
5	<i>Sentence</i> — short, simple, present tense, active voice, positive formulation. Exception acceptable?		
6	<i>Words and expressions</i> — ordinary meaning, uniformity of use, no synonyms, no superfluous words, masculine, singular.		
7	<i>“Shall” and “may”</i> — imperative and permissive. No polite “may”.		

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LEGISLATIVE DRAFTING — REVIEW CONTROL SHEET

Form

p. 3 of 4

TITLE OF DRAFT BILL:		Name of legislative drafter:	
Name of reviewer:		Date of review:	
Instructions: 1) Read entire draft for each review point or group of points.			
2) Indicate sections requiring action and the proposed corrections or action recommended.			
Attach explanatory note if necessary.			
#	Review points	Sections requiring action	Corrections/Action recommended
8	“And” and “or” — ambiguity?		
9	“All” — susceptible of replacement by article?		
10	Pronouns — does their usage create ambiguity?		
11	False cognates (“faux amis”) — problems with English-French words; double-entente; periphrasis.		

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LEGISLATIVE DRAFTING — REVIEW CONTROL SHEET

Form

p. 4 of 4

TITLE OF DRAFT BILL:			Name of legislative drafter:	
Name of reviewer:			Date of review:	
Instructions: 1) Read entire draft for each review point or group of points. 2) Indicate sections requiring action and the proposed corrections or action recommended. Attach explanatory note if necessary.				
#	Review points	Sections requiring action	Corrections/Action recommended	
12	<i>Punctuation</i> — excessive, insufficient, modifies grammatical sense?			
13	<i>Summary</i> — does it bring out the plan at a glance?			
14	<i>Marginal notes</i> — descriptive?			
15	<i>Index</i> — effective working tool for the user of the law?			

Endnotes

1. France: Report preceding Decree No. 71-740 of 9 September 1971 instituting new rules of procedure intended to constitute part of a new Code of Civil Procedure, cited in J.-L. Sourieux and P. Lerat, *Le langage du droit*, (Paris: Presses Universitaires de France, 1975), p. 64.
2. Jean-Charles Bonenfant, «Perspective historique de la rédaction des lois au Québec», (1979) 20 *Cahiers de droit* 387.

Michel Sparer, *Propos sur la rédaction des lois*, Colloque international organisé et animé par Michel Sparer, (Québec: Conseil de la langue française, 1977).

Michel Sparer and Wallace Schwab, «Loi et héritage culturel», (1979) 20 *Cahiers de droit* 399.

Michel Sparer and Wallace Schwab, *Rédaction des lois, rendez-vous du droit et de la culture*, (Québec: Conseil de la langue française, 1980).

France: Secrétariat général du gouvernement, *Élaboration des projets de loi et des textes publiés au Journal Officiel*, (Circular), Paris, Ed., 1974.

3. "Since its inception the Conference has had among the Commissioners from the Provinces the Legislative Draftsmen of the various jurisdictions in Canada represented at the Conference. For many years the interchange of information amongst those members of the Conference had the effect of attaining a high degree of uniformity for the formal expression of statutes in Canada. The Conference was the only body in Canada where the provincial and federal legislative draftsmen met . . ."

"In 1967 the legislative draftsmen were able to obtain the consent of the Conference to the establishment of a legislative Drafting Workshop to precede the annual meeting of the Conference each year. In the past three years this Drafting Workshop has given the draftsmen an opportunity to exchange ideas and to undertake uniformity proposals related to their professional activities. At the moment this Workshop is engaged in revising the drafting rules of the Conference to accord with the present drafting conventions to which they subscribe."

— *Proceedings of the Fifty-Third Annual Meeting of the Conference of Commissioners on Uniformity of Legislation in Canada* (1971), Jasper, Alberta, p. 423.

4. The Honourable Mr. Justice Louis-Philippe Pigeon, until recently a judge of the Supreme Court of Canada, is to date the only author of a reference work on the subject.
— Louis-Philippe Pigeon, *Rédaction et interprétation des lois*, (Québec: P.U.L., 1965) (republished in 1978 by the Éditeur Officiel du Québec).
5. "... principles as well as rules must be stated clearly and concisely, while still retaining the precision so essential in law. Words should not be used in ways that vary from current usage and meaning. The meaning of sentences must be clear. Substance must not be lost in a morass of conditions and exceptions."
— Law Reform Commission of Canada, *Towards a Codification of Canadian Criminal Law*, Bilingual Edition (Ottawa: Information Canada, 1976), pp. 43-44.
6. "It was in legislation that the most basic obstacles to the equality of the official languages appeared. Although the French versions of legislation have improved considerably, the general consensus was that, because bills are drafted initially in English, the French versions are still an embodiment of the Common Law approach, whereas they should not only encompass the principles of both Canadian legal systems but also reflect the intrinsic qualities of the French language."
— Commissioner of Official Languages, *Sixth Annual Report, 1976*, Bilingual Edition (Ottawa: Minister of Supply and Services Canada, 1977), p. 151.
7. [TRANSLATION] "52. A final objective related to the form of the texts of the draft legislation (a revised *Civil Code* of Québec). A *Civil Code* should not be a secret book, accessible only to legal specialists. A *Civil Code* is, first and foremost, intended for the citizen; it should, to the greatest possible degree, avoid professional jargon; it should speak with conciseness and clarity."
— Paul-André Crépeau, «La révision du *Code civil*», [1977] *C.P. du N.* 335.

A similar English language article by Crépeau entitled "Civil Code Revision in Quebec", (1974) 34 *Louisiana L. Rev.* 921, is referred to in an article by Neil Brooks, "The Common Law and the Evidence Code: Are They Compatible?", (1978) 27 *U.N.B.L.J.* 27, p. 33.
8. Shabtai Rosenne, *The Law of Treaties, A Guide to the Legislative History of the Vienna Conventions*, (New York: Oceana Publications, Inc., 1970), p. 220.
9. See in this regard, Michel Sparer, «Pour une dimension culturelle de la traduction juridique», (1979) 24 *META* 68-94.
10. See in this regard, Michel Sparer, «Deux langues, deux cultures: deux lois», *Le Devoir*, 11 February 1980, p. 5.
11. S.C. 1974-75-76, c. 33, subsection 2(1); S.C. 1978-79, c. 9, respectively.
12. Louis-Philippe Pigeon, *op. cit.*, no. 4, p. 27.

13. J.-P. Vinay and J. Darbelnet, *Stylistique comparée du français et de l'anglais*, (Paris: Didier, 1958), pp. 58-59.
14. E. Legrand, *Méthode de stylistique française*, 2nd ed. (Paris: Gigord, 1968).
15. Elmer A. Driedger, *The Composition of Legislation, Legislative Forms and Precedents*, (Ottawa: Department of Justice, Minister of Supply and Services, Canada, 1976), p. 8.
16. According to Grevisse, there are two main voices: the active and the passive. However, [TRANSLATION] "some grammarians often distinguish a third voice: the "reflexive", or "middle", or "pronominal", indicating that the action carried out by the subject comes back to, or reflects back upon the subject". Maurice Grevisse, *Le bon usage*, 11th ed. (Gembloux: Duculot, 1980), p. 704.
17. Louis-Philippe Pigeon, *op. cit.*, no. 4, p. 23.
18. J.-L. Sourieux and P. Lerat, *op. cit.*, no. 1, pp. 45-46.
19. *Ibid.*, pp. 47-48.
20. *Interpretation Act*, R.S.C. 1970, c.I-23, subsection 26(7).
21. *Ibid.*, subsection 26(6).
22. The exceptions are found in *Le bon usage*, *op. cit.*, no. 16, pp. 115 to 119.
23. Vinay, *op. cit.*, no. 13, pp. 222-223.
24. See in this regard, Wallace Schwab, «Les entreprises commerciales», *META*, March, 1979, pp. 120-213.
25. Ejan MacKaay, «Les notions floues en droit ou l'économie de l'imprécision», *Languages* 53, March, 1979, pp. 33-50.
26. André Clas and Paul Horguelin, *Le français, langue des affaires*, (Montréal: McGraw-Hill, 1969), p. 204.
27. H.W. Fowler, *Modern English Usage*, 2nd ed. (Oxford: Clarendon Press, 1977), p. 219.

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